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M I N U T E S
OF THE
P R O C E E D I N G S
AT A
C O U R T - M A R T I A L,

Assembled for the TRIAL of

Vice-Admiral Sir *HUGH PALLISER*, Bart.

AS TAKEN BY

GEORGE JACKSON, Esq;

Judge-Advocate of his Majesty's Fleet.

Published by ORDER of

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MINUTES

OF THE

PROCEEDINGS

AT A

COURT-MARTIAL

HELD FOR THE TRIAL OF

Vice-Admiral Sir HUGH PALMER, Bart.

Rec. July 9 1900

AS AGENCY

GEORGE JACKSON M. Esq.

Judge-Advocate of the Admiralty's Fleet

HELD BY ORDER OF

His Majesty the King, by the Admiralty.

Witness my hand and the Seal of the Admiralty, this 9th day of July 1900.

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MINUTES OF THE PROCEEDINGS

AT A

COURT-MARTIAL,

Assembled on board His MAJESTY'S Ship SANDWICH, in *Portsmouth-Harbour*, the 12th Day of *April*, 1779,

For the TRIAL of

Vice-Admiral Sir *HUGH PALLISER*, Bart.

P R E S I D E N T,

George Darby, Esq; Vice-Admiral of the Blue.

P R E S E N T,

<i>Robert Digby</i> , Esq; Rear-Admiral of the Blue.	
Captain <i>Sir Chaloner Ogle</i> ,	Captain <i>Richard Kempensfeldt</i> ,
<i>Joseph Peyton</i> ,	<i>William Bayne</i> ,
<i>Mark Robinson</i> ,	<i>Adam Duncan</i> ,
<i>Samuel Granston Goodall</i> ,	<i>James Cranston</i> ,
<i>Robert Linzee</i> ,	<i>John Colpoys</i> .
<i>George Robinson Walters</i> ,	

Captain *Bennet* signified, by a Letter to Vice-Admiral *Darby*, his ill State of Health; and Mr. *Johnson*, Surgeon of the *Lenox*, gave Evidence thereof, and of his Inability to sit.

THE Prisoner was brought in by the Deputy Marshal, and Audience admitted. The Order for the Trial, dated the 3d of *April* 1779, and directed to *George Darby*, Esq; Vice-Admiral of the Blue, and second Officer in the Command of his Majesty's Ships and Vessels at *Portsmouth* and *Spithead*, was read, and is as follows:

By the Commissioners for executing the Office of Lord High-Admiral of Great Britain and Ireland, &c.

WHEREAS a Court-Martial was assembled on board his Majesty's Ship *Britannia*, in *Portsmouth Harbour*, on the 7th of *January* 1779, and held, by Adjournment, at the House of the Governor of his Majesty's Garrison at *Portsmouth* every Day afterwards (*Sundays* excepted) till the 11th of *February* following, inclusive, for the Trial of the Honourable Admiral *Augustus Keppel*, upon a Charge exhibited against him by Sir *Hugh Palliser*, Baronet, Vice-Admiral of the Blue Squadron of his Majesty's Fleet: And whereas it appears to us, from the Minutes of the Proceedings of the said Court-Martial, that several Matters were given in Evidence respecting the Conduct and Behaviour of the said Vice-Admiral Sir *Hugh Palliser*, on the 27th and 28th of *July* last, which demand strict Examination, and that he should be tried for the same; we send you herewith the original Minutes of the Proceedings of the Court-Martial above mentioned; and you are hereby required and directed to assemble a Court-Martial on the 12th Day of this Month (if the Witnesses shall then be ready, or if not then ready, as soon afterwards as they shall

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be

be so) to enquire into the Conduct and Behaviour of the said Vice-Admiral Sir *Hugh Palliser*, on the said 27th and 28th of *July* last, and to try him for the same. Given under our Hands the 3d of *April* 1779.

To *George Darby*, Esq; Vice-Admiral of the Blue, and second Officer in the Command of his Majesty's Ships and Vessels at *Portsmouth* and *Spithead*.

Sandwich,
J. Buller,
Lisburne,
Mulgrave.

By Command of their Lordships,
Phil. Stephens.

The Members of the Court and the Judge Advocate were severally sworn, agreeably to Act of Parliament.

Then the Prisoner addressed the Court in the following Words :

" Mr. President,

" THERE is a Matter which I beg leave to mention to the Court at the Outset of my Trial. With a View to increase the Weight of the Prejudices so industriously raised against me, it has been injuriously insinuated, that my Intention in soliciting an Inquiry into my own Conduct, was to revive the Consideration of Admiral *Keppel's*; but I most solemnly disclaim such an Intention, and declare, that my sole Object is my own Vindication; therefore in the Course of the present Trial I am determined to avoid, as far as my own Justification will allow, every Thing which can have the least Retrospect to the Conduct of Admiral *Keppel*, or any other Person, except myself."

The Court was immediately cleared.—After some Time spent, the Judge Advocate having proposed, that Admiral Keppel may be the first Witness called, the Doors were opened, the Prisoner was brought in, and Audience admitted. Notice was given that all Persons to be examined as Witnesses do withdraw.

Before Admiral *Keppel* took the Oath, he spoke as follows :

" Mr. President,

" BEFORE I take the Oath, may I beg to be allowed to say a Word or two. When the Judge Advocate read the first List, he said they were Witnesses on the Part of the Crown; I only beg to observe, that I am far from being a Volunteer before this Court; at this Moment I stand in a very painful Situation, and the Evidence that I must give, I hope will never go into the World as carrying Rancour, or looking like Revenge, from me to the Gentleman who is now your Prisoner; but when I give my Evidence, which I do not wish to give at all, and if you would allow me to retire from it I shall thank you, I cannot possibly say Yes or No to Questions that are asked me; they are so mixed with the Business that I had that Day, that they will call for Explanations from me, which will be exceedingly disagreeable for me to make; because they will carry Part of my own Thoughts upon the Moments, whereas the pleasant Witness is to say Aye or No to a Question: That is what I shall be unable to do, and under that Circumstance I should wish not to be examined at all. I am sure there will be Witnesses enough to the Matters you want to inquire into, if my Attendance can be dispensed with; but when I say that, I must say one Word more, if the Vice-Admiral of the Blue, who is before you, wishes me to stay the whole Time of the Trial, he has a Right to every Thing I can say; he will have it, as far as I can speak strictly and justly consistent with the Oath I must take."

The Members of the Court retired.

After a short Time they returned, when it was declared, that the Court finds itself under an indispensable Necessity to take the Evidence of Admiral Keppel.

The Honourable Admiral Augustus Kerpel sworn.

Q. PLEASE to relate to the Court the Proceedings of the Squadron which was under your Command on the 27th and 28th of July last, so far as they respect the Conduct and Behaviour of Vice-admiral Sir *Hugh Palliser*.

A. That is a Question to which, if my answering to it can be dispensed with, I certainly shall desire it. My Observations of that Day were taken up in every Part of it, in every Minute of it, in looking at, and endeavouring to conduct his Majesty's Fleet under my Command to the best of my Abilities. For Signals, for Orders, for Words that fell from me, I must refer the Court to those Officers that received those Orders; to those Officers that minuted those Signals; to People that were near my Person, and that heard what I said. It is morally impossible for any Officer (you must all be Judges of it), it is morally impossible for an Officer, with so large a Command as I had, to remember every Signal I made, to remember every Word I said, to remember every Order I gave: it is as impossible almost as it is to be able to repeat the Minutes that are before you of that Court-martial which was held the other Day; and therefore I will answer, if you will allow me, straight and direct to any one Question, without Equivocation; and Questions, I suppose, may be drawn from those Minutes; and if necessary, as I said before, I must give a little of my Reasoning upon them, because my own Conduct runs with every Man in that Fleet, from the first of the Day to Sunset, and every one of the Ships of the Fleet, from the greatest to the smallest; and therefore relating in a Narrative of all that passed, I may mistake. Upon a Cross Examination I may be found to have mis-stated this or that, and be desired to set it right: therefore I find infinite Difficulty: but if you say I must go on, and relate it, I will relate it certainly; but I must have great Allowance made for any Error I may make, from the Situation I must be in. There was not any Part of the Day that I was not looking to the Whole. Many Parts are very fresh in my Memory; but to give a Narrative upon Oath, going straight along with all the Circumstances, is the most difficult Thing in the World (I am afraid I am intruding upon the Court). It is not a difficult Thing for an Officer to give a Narrative respecting his own Ship; but I was the Commander in Chief, and every Title that passed during the whole Day, relative to every Ship, came to me and went from me; therefore it makes more difficult to me, than to any other Person probably whatever. If you can form a Question out of the former Minutes, I will answer it very straight, to the best of my Memory and Judgment. I hope I don't appear equivocal in this, because it is not from meaning to put the Court under any Difficulty at all. If I had been an Accuser, it is the Thing I should have done; but, thank God, I am not an Accuser, and here I am at your Disposal.

The Court retired, and in half an Hour returned, when the President answered, That

"The Court is fully aware of the Difficulty you feel yourself under of recollecting Circumstances very minutely, relative to the Conduct and Behaviour of Sir *Hugh Palliser*, on the 27th and 28th July, but still wish you to give such Information as may be in your Power. If you continue under the Difficulty, the Court will proceed to Questions.

A. That is certainly my Wish.

Q. Please to inform the Court what Number of

Ships the Division of Vice-Admiral Sir *Hugh Palliser* consisted of on the Morning of the 27th July last, when in Sight of the French Fleet?

A. Ten.

Q. What Number of those Ships did you order to chase the Enemy?

A. To the best of my Recollection, Six or Seven, but in regard to that I should explain a little. We were in Pursuit of the French Fleet; a long Pursuit fatigues every body, and I always took as much Rest as I could get, when there was no immediate Business for me. Admiral *Campbell* was my First Captain, in whom I reposed the greatest Confidence, from my Knowledge of his Ability; and that Confidence was not thrown away at any Time. I gave him general Directions, without disturbing me, to call and bring up Ships, at all Times, that were at any improper Distance from me; I also directed him to wake me at all Times when necessary. Not thinking about my Rest, when there was any unforeseen Accident in the Fleet, or any Thing relative to the Enemy, that made it at all material, he was constantly to call me. On the Morning of the 27th he came down and waked me, at what Hour exactly it was I cannot recollect, and I shall say nothing that I do not recollect. The first Question I asked him, was, Can you tell me any good News of the French Fleet? He said, they are further from us To-day than they were Yesterday, but I have directed several Ships of the Vice-Admiral of the Blue's Division to chase to Windward, to close with us, because I thought they were too far to Leeward, and under such an easy Sail, that we were losing the Use of them. If I have done wrong, I will call them in directly. I believe I was jumping off my Bed to go; I told him No, it was certainly right. I looked at the French Fleet a little after, and it was just as he had described to me. They were further off. There was no Idea, in my Opinion, of coming into Action at that Time, and those Ships were going on, I believe Six or Seven, but it was meant to be nearly the Whole of the two-decked Ships, the Vice-Admiral of the Blue being, according to Admiral *Campbell*'s Description, with his Mainmast up, and to Leeward of the *Victory*.

Q. Did it appear to you, that Sir *Hugh Palliser*, on the Morning of the 27th, did all that was in his Power to bring the *Formidable*, and those Ships of his Division, then remaining with him, into Action with the Enemy?

A. It appeared to me that the *Formidable* carried, after the Ships were gone from her, all the Sail she possibly could, to get into Action. The rest of the other Officers were doing the same. I had called the Ships from the Vice-Admiral, so that at that Time he could not be bringing his Ships, for they had been directed to come to Windward, consequently he was coming on himself to close where he could.

Q. Did it appear to you, that, during the Time of engaging the Enemy, he behaved as became an Officer of his Rank and Station in the Fleet?

A. At the Times I observed the Vice-Admiral of the Blue (I cannot be very nice as to it), but at the Times I observed him, he seemed to be coming along the French Ships just as well as any other Ship that led along them, either before or after him; and in doing so, he was doing his Duty as a Flag Officer. I do not mean to narrow the Question.

Being a Quarter past Four o'Clock, the Court adjourned, till Nine o'Clock To-morrow Morning.

SECOND

S E C O N D D A Y .

TUESDAY, the 13th of APRIL, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

The Honourable Admiral Keppel was again called.

Q. When you came out of Action, and the Fleet had passed the Rear of the Enemy, did you make any Signals, and at what Time was the first Signal made?

A. After I had passed the Rear of the French Fleet, my first Business, as Admiral of the Fleet, was to look and see where all the Ships were. It was not immediately after I had passed that I could see. The great Fire that had been ahead of the *Victory*, from the *Victory*, and astern of the *Victory*, had taken up so solid a Space, that I may say it was a great while. Though the Wind had been fresh in the Morning, the Fire had calmed it in a Manner that I did not think possibly could have been; but so it was, therefore it took some Time before I could see where the Ships were. As soon as the Smoke cleared away, the first Thing that presented itself was the Vice-Admiral of the Red trying to weather me, coming along in a Manner that made my Heart warm, for he was doing it like a Man. The other Ships that I saw, were looking to me as if they had received Damage; such Damage as they were in the Repair of, but there were no Masts, Yards, or Sails, that I saw, gone: but such was their Situation, that it did not occur to me, in a Moment, what was to be done; but it did in a Minute, and I made the Signal, immediately after the Smoke was gone, for the Fleet to wear. That Wearing was to lay their Heads again to the Enemy. The Signal for Wearing could not be executed,—not by the *Victory* herself, for the Ships astern of her were so together, that, though the Smoke was cleared away, it would have been unsafe for the *Victory* to wear, but just at the Minute she could not wear. I believe the *Victory*, with every Art of Man, might have wore, if the Ships had been clear of her astern, about Seven or Eight Minutes sooner than she did, but when they were clear she wore.—That was about, I should think—but I cannot be exact as to Minutes—may be the Signal for wearing was out Ten or Twelve Minutes, the natural Preparation even for Ships that were in Order—but we wore in Ten or Twelve Minutes, I think. I am not sure whether the Signal for Battle was hauled down before I wore, or after I wore; but I know I ordered it to be hauled down about the Time when it was hauled down. I could not see myself; indeed I did not look; it was not my Business: But as soon as we had wore, with the *Victory's* Head to the Enemy, then it was hauled down, I am sure; and then the Signal was ordered by me to be hoisted for the Line of Battle ahead. For the Moments of the Signals, and the precise Orders I ever gave, I must beg to refer the Court to those Officers that took Minutes, to those Officers that took the Accounts of Signals, and to those that

heard me give my Orders; for really I cannot be precise; and I am sure, Gentlemen, you will think it impossible for a Commander in Chief, who gave Orders from Ten in the Morning till late in the Evening, to recollect every Order he gave. I shall beg to refer the Court to those Officers that heard and executed them; I took no Minutes; I wrote nothing down that Day; I trusted to those about me to be particular, and I believe they were so. When our Heads were to the Enemy again, I looked to the Fleet.—Where is my Fleet now?—The Ships that came last out of Action, which were the Vice-Admiral of the Blue's Division, were passing me; none of them, as passing me, attempting at that Minute to place themselves ahead of the *Victory*, where it was their Station to be. The Reason they did not do that must be very obvious; the Braces and Bowlings were wanting; though they got into that Situation as soon as Time would admit. When I state this, I state it as a Matter of Fact, without imputing any Fault.—They passed me all. The Vice-Admiral of the Red was first in Action; he passed me upon the same Tack with the *Victory*, going towards the Enemy, the Signal for the Line being out. It was natural for me to look whether my Line was formed or no, to see how I could form it. I saw no Probability of forming it in the Manner that I hoped.—I am upon my Oath here.—When I wore to the Enemy, I thought it would have been a proud Day for England. The Signal for the Line, that was to call different Ships, I presume, called them; they came as fast as they could; I blame nobody for coming sooner or later; I concluded they were all coming as fast as they could. The Blue Division was just out of Action; they consequently wanted more Time. My Division had just been out of Action before them; we wanted more Time than the Red. The Red had been out of Action before us; they wanted less Time than either of us.—That was the exact State of the Fleet, as appeared to me, and indeed as it was. I believe that is a complete Answer to the Question. I understand the Question is, What Signals I made? I made the Signal to wear; and as soon as I wore, I made the Signal for the Line of Battle ahead; and till I made another Signal, that was to be in Force of course: But that I am not asked to. I made the Signal first to wear, as soon as the *Victory* could wear; for the *Victory* was ready first, I believe. As to any other Signal after that, I shall be ready to answer when the Question is asked. I made the Signal to wear, and then I made the Signal for the Line of Battle ahead; all which was in the Space, may be, from first to last, of Thirty or Forty Minutes. I never looked at my Watch all Day long.—When I say every Ship, I should say, that the *Formidable* was the last Ship that passed me of the Blue Division.

Q. How long was the *Victory* on the Larboard Tack?

A. To answer that Question, I had rather refer to those Minutes (pointing to the Minutes of the Evidence given on the late Court-martial), but to a little Time I cannot guess. She was upon the Larboard Tack till I thought it no longer

longer judicious, nor possible for me to suffer, bearing the Name of an Officer, before I wore. She was upon the Larboard Tack till I saw the Enemy forming upon their Starboard Tack;—my Line not formed;—then I made the Signal to wear.—If any Questions are asked me relative to that Matter, I am exceedingly clear in my own Memory upon it; but for the Time, either Length of Time or exact Time, I am not competent to speak. I leave that, as I said before, for those about me to be particular to.

Q. When you was upon the Larboard Tack, what was the next Signal you made after that to wear?

A. The next Signal that was made was the Signal for the Line. There was no other Signal that was made but Signals relative to Frigates to come within Hail of me, for People to come to be told something. Whenever I am questioned to that, I am ready to answer to it. I avoid as much as I can, I did in the Beginning beg not to give a Narrative. This draws me into Narrative, which I am sorry for; but it is Narrative to your Question, but not to any Proposition of my own. I must narrative to your Question, though I beg to be excused giving a Narrative of my own, as I said before. I cannot possibly answer Yes or No to any Question. If you mean now to ask me any Question about any Signal, I am ready to answer it.

Q. Was there any Signal relative to the Fleet whilst you was upon the Larboard Tack?

A. No Signal relative to the Fleet then, but the Signal again to wear. If I am to answer the Question mentioned before, it goes to those three Signals;—the first Signal to wear—the next Signal for the Line of Battle—the third Signal to wear again.

Q. When the Signal for the Line of Battle was first made, on what Tack was it intended the Fleet should be formed?

A. Whichever Way the Admiral's Ship's Head was, that was the Tack the Line was to be formed on.

Q. What was the Position of the *Formidable* at that Time, and did she obey these Signals, while the *Victory* was on the Larboard Tack?

A. I must be exceedingly nice about this. Obedience is the first Principle of an Officer, and therefore I must be very nice and delicate about it. The *Formidable*, as I mentioned before, was the last Ship that passed the *Victory*. I cannot say, in the Situation I now stand, I ever saw her upon the Larboard Tack; if I was put to the Torture, I could not: But, upon a former Occasion, there has been some Evidence given, that she was upon the Larboard Tack. I saw her coming to the *Victory*; I saw her pass the *Victory*, the *Victory* then having the Signal out for the Line of Battle; and the *Formidable's* Situation, in Obedience to that Signal, was not to pass the *Victory*; it was to stay upon that Tack ahead of the *Victory*.

Q. Was the Vice-Admiral of the Blue's not obeying that Signal the Cause of your not attacking the Enemy again upon the Larboard Tack?

A. No; certainly not. The Enemy were in a Body—a Cluster of Ships, it has been called—but they were in a Body drawing their Ships out of that Body in a Line, I think in a regular Mode. I have seen the *French* form their Line before, and they formed it exactly in the Way that this was formed. When Sir Edward (now Lord) Hawke attacked the *French* Fleet, they had got exactly into the same Cluster that some People thought Confusion. I did not think so, and they drew out Ship by Ship. It was the precise Way the

French formed their Line when Mons. *Conflant* met the Fleet of *England*—(that is not so long ago for me to forget it)—Their forming in that Way, my believing them capable of forming their Line, my seeing, for that Minute, the Incapacity of the *English* to form their Line, as I had not the *English* Fleet to throw away, but had it to beat the *French* Fleet, I therefore, soon after, made the Signal to wear the Fleet; for the *Formidable* alone, with the *Victory*, certainly could not have attacked the *French* Fleet, nor with many other Ships with them. The first Question I was asked was, Whether the *Formidable* obeyed the Signal? I have described she did not; but her not obeying the Signal at that Time did not affect my re-attacking the *French* Fleet at that Time. I was manœuvring to the best of my Judgment; the *Formidable* was herself doing what I was going to do; but she took it upon herself to do it, not with my Order. I wore the Fleet.—I am talking to very good Judges, and I am ready to submit my Conduct to them. I will tell the Court, and all the World, what I would have done when the *French* were forming their Fleet out of that Position: If I could have formed my Fleet, and weathered them, I would have carried my Fleet on in the Line. If I could not have weathered them, I would have wore, as I did, and laid my Stern to them. I could not weather them. If I could, I had no Line to weather them with. Then I had nothing to do but to wear, to collect my Ships. I wore to collect them, and many were soon collected by it. The Vice-Admiral of the Blue soon passed me; but at that Minute whether he passed me or not, I cannot be sure. If he had stayed where he was, ahead of the *Victory*, I could not have attacked the *French* Fleet; for there was no other Ship, either of my own Division or his, that was formed ahead of the *Victory* at all. They could not so form; they were unable at that Minute.

Q. Did the *Formidable* appear to you to be disabled, or in such a Condition as that the Vice-Admiral of the Blue could have obeyed those Signals on the Larboard Tack?

A. Most undoubtedly. I saw no more Appearance of the Vice-Admiral being disabled, than of the *Victory*; less indeed, for the *Victory* was obliged to unbend her Masttopfail. I saw no Disability in the *Formidable* at all at that Period.

Q. Did the *Formidable* obey or repeat those Signals?

A. I did not see the *Formidable* repeat those Signals at all; and yet she might have hoisted the Pendant for wearing, for ought I know; but I neither saw it, nor was it ever reported to me that she had done so.

Q. What was the next general Signal after the Signal for the Line of Battle, whilst upon the Larboard Tack?

A. I gave a Direction, for which I had no Signal; that is to say, no applicable Signal.—The Fleet, described as it was before, seeing their Braces and bending their Bowlings, that they could manage their Ships to steer towards an Enemy; I thought something was to be done; I saw the Vice-Admiral of the Red ready; he looked as if he wished it; I sent to him; I had no Signal for an inverted Line. I gave one out afterwards, when I failed again, because I saw the Want of it. The 31st Article I thought at that Time was not applicable; I looked at it; when, I say, I looked at it, I did not open the Book, for all these Signals are much in my Head without looking at the Book. I called the Captain of a Frigate on board, and bid him go to Sir Robert Harland, and tell him to lead. Whilst the Fleet were

were in that Condition, I had not a Doubt they would be out of it in Half an Hour; but before the Frigate could go on, the Operations you have heard of before took place; and as Captain *Sutton* was going with the Orders, they occasioned me quickly to give an Order quite the reverse—instead of forming ahead, I saw what I was a little uneasy to see; I saw it wanted nothing but very great Spirit in the *French* Fleet; for their Masts and Yards were in such a Condition, that if their Hulls had not been pretty well beaten, they had an Opportunity which they lost. I thought it my Duty, by Message, to place Sir *Robert Harland* in the Rear of the Fleet. I sent to him, that he was to form in the Rear of the Fleet, as soon as he could get there, to protect the Fleet, whilst they were putting themselves into Order and Condition. He obeyed it, as became him. After that, the next general Signal that I made was, I believe I before said, a Signal to wear. These were general Orders; for at the Time I sent this Order it was in the Minute of wearing. The Signal was out to wear. When I wore upon the Starboard Tack, the Signal for the Line of Battle was still flying; it was always flying, except for Seven, Eight, or Ten Minutes. The Reasons for its not being then flying you will have given you. I got upon the Starboard Tack, and I passed again the Ships that I had passed before. That was the Vice-Admiral of the Blue's Division. They were upon different Tacks again, and all upon different Tacks, except the Vice-Admiral of the Blue himself; he was upon the same Tack with the *Victory*, which was the Starboard Tack. The *Victory*, I believe to the best of my Judgment, was going three Points from the Wind, with her Forefall and Foretopfail, her Maintopfail not quite bent; it was bent very quickly; they were a Parcel of fine Fellows; it surprised me; it was done in a Moment. I was leading down full three Points from the Wind, to succour five Ships, that I saw nothing could have prevented from being very ill-treated; but the *French* not venturing to do it, I bore down to succour them; that left the Vice-Admiral of the Blue, who clung his Wind as I passed him; that left him to fall astern, I believe, a little Way. Most of his own Division were standing towards him, to close with him. The Signal being out for the Line, they were, as I suppose, going to the Vice-Admiral to form with him, as he might think proper to form; but when they had wore to him again upon the same Tack, I did not observe that he and they came into the Line. Then the Signal was made; a blue Flag at the Mizzen-peak, and the Officers, whether Admiral *Campbell* or who it was I do not recollect, said, I apprehend they do not see it, shall we haul down the Signal for the Line of Battle, to shew that Signal the plainer? That is the next public Signal that was made, the blue Flag at the Mizzen peak, which was for the Fleet to bear down into the Admiral's Wake. I was observant of the Vice-Admiral of the Blue and his Division at that Time. They kept their Wind; but at one Minute Somebody said, they bore away a little more; upon that the Signal was hauled down for their coming into the Wake, and the Signal immediately hoisted for the Line of Battle again. That was a very short Space of Time. I suppose Seven, Eight, or Ten Minutes. I think that was at about Half after Three, as they told me, though I never looked at my Watch. Minutes grew Hours. I believe I was looking a little more to succouring the Ships to Leeward, which I saw in the Course of Half an Hour I had done. I was no longer uneasy about those Ships.

The repairing those Braces and Bowlings that I talked of before, operated upon different Ships; so that Nobody for a Moment was able to get into their Station. By Degrees the Line began to form ahead, not astern. Sir *Robert Harland* had executed the Orders I gave him most ably and well, and it had all the Effect I meant it to have; it deterred the *French* from coming up. Indeed, as they did not take the Moment, every Minute made us stronger, and they were left to be apprehended. Seeing him form as he did, the *French* led large; they by Degrees, as they repaired their Damages, came away, one at a Time, and others followed; but the Day was going, and I heartily wish that I had been excused from giving my Evidence, in the Opinion that I shall be obliged to give. I was wore out; my Patience was gone, I believe gone to an Indiscretion. I thought Sir *Robert Harland*, the Vice-Admiral of the Red, had done his Duty; it was Time to send him away. He was astern of me, to Windward of my Wake considerably; but Wake it is called. I called myself (my First Captain, Admiral *Campbell*, was very quick generally with his Observations and Recommendations of Signals), I called in those Two Frigates, by my own Orders, distinct of other People's Opinions. I was grown impatient. I ordered one to tell Sir *Robert Harland* to take his Place in the Van; the other, the *Fox*, I gave Orders to; I do not exactly recollect, but the Purport of them must be undoubtedly to call the Vice-Admiral of the Blue; for I certainly then waited for nothing but his bringing his Division to me, to go quickly to the *French* Fleet. I had Daylight to do it; and they must either have fought the *English* Fleet, or ran away by Daylight, as they did by Dark. I am very sorry to give this Evidence, but it is the Evidence that arises from Truth. The Blue Flag was hoisted at the Mizzen-peak again; and that was repeated by the *Formidable*. I know of no other Signal that she did repeat. The Blue Flag at the Mizzen-peak she hoisted; the exact Moment when that was hoisted I do not recollect; but I believe the *Fox* was gone, or going, to the *Formidable* at that Time. When I say that she was going to the *Formidable* at that Time, that is a Matter of Belief. I do not speak that as having any Weight at all.

Q. Did the *Formidable* bear down, in Obedience to those Orders?

A. Never.

Q. What was the Position of the Vice-Admiral of the Blue from Five to Seven o'Clock?

A. The Vice Admiral of the Blue, from Five to Seven o'Clock in the Afternoon, took my Eye all the Time. The *Formidable* seemed to me to govern herself as near to the Wind as she could; gaining, in my Opinion, rather to Windward constantly; and keeping, as far as my Eye would direct me, pretty much the same Bearings from the *Victory*, from Five to Seven o'Clock. She was without a Foretopfail for all that Time, and for a great deal of Time before that. If I should reckon upon Time, it was so long a Time, that it is hardly to be repeated; I believe near four Hours. She was with her Foretopfail aboard; she was with her Maintopfail set; she was with her Maintack aboard; whether she had a Mizzenstayfail or Mizentopfail, Aye or No, I do not recollect; I rather think she had a Mizzenstayfail, and, as near as I can possibly describe her, she did not fall astern of the *Victory*; she drew a little to Windward; she seemed rather Half a Point nearer to the Wind than the *Victory*; and, indeed, under the little Sail the *Victory* had, she almost always,

ways, or generally, carried her Helm-a-lee in such a Swell upon a Wind as there was. Now, in regard to the Position where the *Formidable* was, I never did set her by Compass; I never did tell any body to set her by Compass; I never did tell any body to take a Note of the *Formidable*, or of any body else in the Fleet. I had no Intention to make Minutes to cover myself on that important Day; I looked to every Thing fairly, honestly, and kindly, but without setting the *Formidable*. As far as a Seaman's Description goes, I will tell you where she appeared to me: Going to the *Victory's* Stern, there was the Captain's Couch, that touched the Stern Bulk-head; and I stood there about I believe; the Couch was rather to Windward, not in the Midships of the Stern. I stood there rather to Windward of it; and looking out of the Stern Windows, I could not see the *Formidable*. When I had a mind to see the *Formidable*, I was obliged to go into the Gallery to see her: she appeared to me to be so far drawn up; if I should guess, she was between the Beam and the Quarter; but, as I said before, not having set her, I cannot possibly speak to a Point of Description of her; but there she was, and it appeared to me, that to have fetched her Station; the *Victory* going but two Knots and two Fathoms, I believe, it seemed to me, to fetch her Station; leaving Room for the Ships of the Line astern of the *Victory*, and that should form ahead of the *Formidable* in their Stations in the Line on the Starboard Tack: That going on as the *Victory* was, she would have gone, may be, four, five, six, or seven Points from the Wind, with the Wind hardly upon the Starboard Quarter. It appeared so to me, but I never set her by Compass, I never ordered her to be set by Compass, nor did I say, mark this or mark that, I gave general Directions long before; and those who had those Directions took them down; whatever they were, they will appear before you.

Q. At what Time, between Five and Seven, did the Red Division get into its Station?

A. The *Misford*, that was directed to order Sir Robert Harland to take his Position in the Van, was called between the Hours of Four and Five; I don't know precisely as to Time, nicer than that. The Vice-Admiral of the Red, as soon as he had his Orders, set his Toppallantsails and made all the Sail he could carry. He was in a Position that I could have made use of him in his Station from the Minute he made sail; for there was more to be done than merely obeying the Signal. I was to Windward of the *French* Fleet. —There were very few of the *French* Fleet that had got up the Length of the *Victory*. The Moment that I had seen the Vice-Admiral of the Blue put his Helm awether to bring his Division down, I had an Operation in my Mind immediately—I had a great deal to do, but it was within Compass—the Wind was fair for me.—It is very fresh in my Thoughts what I ought to have done; and as I am very clear what I ought to have done, therefore I know what I should have done. The Vice-Admiral of the Red went on; I don't know exactly when he got into his Station, but, as far as Toppallantsails, and every Sail an Officer could set, he got into his Station as soon as that would carry him. It was tolerably early in that Afternoon—if I should suppose (but I don't love supposing) I should imagine about Half after Six—I should fancy so; but that is not fit for Evidence, because I cannot say positively.

Q. What Answer did the *Far* bring to the Message you sent to the Vice-Admiral of the Blue?

A. The *Far* received Directions from me to proceed to the Vice-Admiral; which Directions

were given to him by Admiral Campbell distinctly, and were delivered to him by myself. I have said, in a former Part of my Evidence, I was agitated, impatient, and warm, and being so, the Message I delivered myself I am nowise correct in—it was delivered in Warmth. The Expressions might not be so civil as I wished they were, for I don't wish to make use of improper Words, I am sure; I was warm, therefore, not remembering exactly, I don't trust to my own Message at all. Admiral Campbell received my Orders distinctly.—I hardly remember what they were—he remembers what they were; and for what I said to the *Far*, I must refer to the Officers of the *Far* who heard them. I never received any Answer at all from the Vice-Admiral of the Blue by the *Far*.

Q. What Frigate did you appoint to repeat Signals?

A. The *Arctusa*, Captain Marshall—She alone repeated Signals. I could not spare other Ships to repeat Signals to the Vice-Admirals, who ought to have had them, I think, but I had not Frigates enough in the Fleet, for the *Uses* wanted for Frigates. I felt the Want of them exceedingly that Day, so that there was but one.

Q. Were the Signals made by the *Victory*, repeated by the *Arctusa*?

A. If I could say positively I would, but I cannot say positively; I know nothing to the contrary. I know this, and I will appeal to every Officer, that ever was in any Fleet, if ever they knew so quick and so able a Repeater of Signals. That I know I never saw, so that I conclude he did repeat the Signals.

Q. Was the *Formidable's* Situation such, as to be able to see those Signals, either from the *Victory* or *Arctusa*, between Five and Seven o'Clock?

A. Most undoubtedly, she could not fail of seeing them; she certainly, from the Time she was on the Starboard Tack, till Dark, might have seen them.

Q. Were any of the Vice-Admiral of the Blue's Division in their Stations in the Line about Six o'Clock, and how many?

A. It is a Question of great Nicety. The Matter is, what they thought their Station. If I am to give a direct Answer, whether they were in the *Victory's* Wake, and in their Stations in the Line, I don't know of one—not at the Time you speak of.—They were with the Vice-Admiral who commanded that Division, excepting the *Ramillies* and the *Rebus*, two Ships that had been in the Repair of their Damages to Leeward; which Ships, at that Time, were carrying Sail to get up to Windward. Where they were exactly at Six o'Clock, I don't know, but those two Ships had their Main Tacks on Board, and were getting up. They were great Objects to me, and I bore away till I had secured their Junction. Every other Ship was with the Vice-Admiral of the Blue. To describe strictly their Station, is a Matter of Nicety to which I cannot give an Answer. They were not in a Line of Battle astern of the *Victory*, to my Memory: I will say, I don't know there were any. At Five o'Clock in the Afternoon, there was no Ship in her direct Station astern of the *Victory*—but the *Indragani*; the *Prince George*, and *Simsfaine*, were so situated, that I could put them in their Stations in a Minute, which I did; but I liked the Situations they had taken, and I left them there till Five o'Clock. The Moment I said you are not right in being there, they took the other Station. No Operation could be quicker. The *Vanguard* was very much damaged, and a good way astern. I looked upon her as helping herself to get on—I never looked upon her

as being able to help us very materially—I believe that Ship's Company was not a very good one—not able to assist her like those in the Ship I had the Honour to be in, for my People could do any Thing, and in a Minute—so that they were not there. It is a Question which I should not choose really to answer directly, because it is a very nice Point of Discipline, and, to answer the Question Aye or No, would have a Harshness in it, that I beg it may not go to the World. That they were not in their Station in a Line of Battle astern of the *Victory*, that my Eyes direct me to say with a great deal of Confidence. Before I failed the second Time, I decided upon this Point; because I gave Orders that the Line should be taken from the Center. From that Minute Nobody had a Choice. I did not mention this to any one Officer whom it might affect; the Delicacy I had, the Desire I had not to interrupt the Moments of those I thought brave and gallant, prevented my talking it over with any of them. I gave the Order, and, if it was a Reprimand, wherever it touched it was the gentlest that could possibly be given. I thought such an Accident happening again might be fatal, and therefore I did not think myself doing my Duty, without making known to all in the Fleet what I expected them to do.

Q. Had the Vice Admiral of the Red, and his Division, made sail from the Rear Time enough to have given Place to the Vice-Admiral of the Blue and his Division to have taken their Stations in the Line?

A. I never knew when they were in the Rear, that it would have prevented the Vice-Admiral's taking his Place in the Rear. The Vice-Admiral of the Red was astern, a little to Windward of the Wake of the *Victory*. When I sent to him to go ahead, he weathered the *Victory* above a Mile, a Mile and a Quarter, I believe. There was a great Space between the *Foudroyant* and the Vice-Admiral of the Red's Division, but it had nothing, in my Mind, to do with the Vice-Admiral of the Blue's bearing away at all; but, if it had to do, at Five o'Clock the Orders went one Way, the Orders went the other Way; the *Milford* went to the Vice-Admiral of the Red, the *Fox* to the Vice-Admiral of the Blue. The Signals for the *Bienfaisant* and *Prince George*, all belonged to the same Period of Time, as near as you can imagine—it had not, in my Mind, if I had thought it had, I should have sent the Vice-Admiral of the Red away; but the Vice-Admiral of the Red went away from that Situation, when I sent the last Orders to the *Foudroyant*, so that, if it had impeded before Five, that Impediment was out of the Way. The Frigate that went to the *Queen*, to the Vice-Admiral of the Red, was with him presently, because she wore and stood so him. The Frigate might go Five or Six Knots—the Ship, I suppose, Two or Three, so they joined in an instant, but the Vacuum between the *Foudroyant* and the Vice-Admiral of the Red's Division was a large one. The Vice-Admiral of the Red was formed by way of Protection to the Rear, but had no Order to take the exact Place of the Vice-Admiral of the Blue; but, if that had been taken (it is a very nice Description), I do think it right. Justice to say, that the Vice-Admiral of the Blue's Division had a Right to more Time, reckoning to the Time of the Day, than any other Part of the Fleet had. They came out of the Line of Fire Half an Hour after the Center did, consequently they required Half an Hour more Time of the Day. They might be a little more damaged; then give them a little more Time for that—But

at Half an Hour after Four, I thought myself there was no Excuse to the Country, and to the Credit of the British Flag, for waiting any longer—that they had had full Time, not to chace, but full Time to put their Helms aweather, and come down—they were going to Ships that I supposed full as much damaged as themselves. We waited till Five o'Clock; that was no Impediment, for the same Message that went to the Vice-Admiral of the Blue, to say I waited for him, went to the Vice-Admiral of the Red. I did not say that I sent that Message, but I am sure my Mind was such, that I must have sent the Message; I have no Doubt of it, those that heard me are the best Judges of what I did say; but it was Five o'Clock; and when that Message was sent by me to the Vice-Admiral of the Blue, if the Vice-Admiral of the Red had been an Impediment to his forming astern, that Impediment was removed, because the Orders to the Vice-Admiral of the Red got to him as soon as to the Vice-Admiral of the Blue; and his moving out of the Way must have been seen by every Body on board of that Ship, and every other Ship, I cannot have a Doubt of it. What was seen by me, must be seen by every Body else; I am very sure I saw it—it was my Watch always—it was my Duty to be upon Deck, and I was hardly ever a Minute off; but certainly they could be no Impediment after Five o'Clock,—but I think they could be no Impediment at any Time. The Vice-Admiral of the Blue might have his Reasons why he could not bear down at all. I do not enter into that; but the Matter is, Whether, if he had put his Helm aweather, the Vice-Admiral of the Red was in his Way. Positively I have no Doubt—they could not be in the Way. What Six or Seven Ships, that were Masters of themselves, in the Way, when the others were a Mile and an Half to Windward? Certainly they would have drawn away; but if not, I should have sent a Message to them; but I sent the Message to the Vice-Admiral of the Red, and there might be Six, Seven, Eight, or Ten Minutes, between that and the Message by the *Fox*. The Vice-Admiral of the Red must have had his Message first, and therefore must have been out of the Way, if that is supposed to have been an Impediment.—It certainly was a one, at any Time, in my Opinion.

Q. When the Red Division had got into its Station, as you suppose, about Half past Six, how did the headmost Ships of the French bear from the *Victory*?

A. I suppose the headmost Ship might be upon the Lee-beam a long random Shot, or about Two Miles.

Q. Did you make any Signal after Seven o'Clock, or during that Night, relative to the Fleet?

A. At Seven o'Clock I made the Signal for every Ship of the Vice-Admiral of the Blue's Division to come down, except the *Foudroyant*, and the Signal for the Line of Battle remained, I believe, all Night; but the Signals for different Ships, as long as I was upon Deck, and I was upon Deck till Dark, and then I went down; but those Signals were flying as long as it was Day, and the Line of Battle Signal was, I believe, up most Part of the Night. I made no Signals whatever after Seven o'Clock, no Night Signals; I never practised Night Signals, I know the Difficulty of understanding them; and so on.

Being Twenty Minutes past Three, the Court of Enquiry adjourned, till To-morrow Morning at Nine o'Clock.

T H I R D D A Y.

WEDNESDAY, the 14th of APRIL, 1779.

COURT met according to Adjournment.
Prisoner brought in, and Audience admitted.

Admiral Keppel called in again.

Q. At what Time, or nearly so, were the Ships of the Center Division formed in a Line of Battle in the Afternoon?

A. The Ships of the Center Division, when I was standing upon the Starboard Tack to the Southward, excepting the *Prince George* and *Bien-faisant*, which had taken their Stations ahead, as I have before observed, and which I approved of by not altering (when I thought they should no longer be there I did alter it), but the Center Line, excepting the *Courageux* that was to Leeward, in the Repair of some Damages in the Hull, and the *Vengeance*, that I have described to be astern, them excepted, there was a Line of the Center Division formed very soon and very quick after I was upon the Starboard Tack—I dare say they were all formed by Half after Three, or thereabouts; but there was a little Alteration in their forming, because as I led large, without Signal, to those Ships that were repairing to Leeward, they bore away to go on with me; but I think by Half after Three, or a Quarter before Four, every Ship belonging to the Center Division was in a Line, the *Courageux*, as I said before, and the *Vengeance* excepted. The *Courageux* was soon in a State to get there—she had her Main Tack on board—she had been in great Distress in point of making Water, and seemed to have some Rigging to set to rights, but she got up very becoming herself into her Station in the Line—I cannot say exactly at what Time, but I believe by Five o’Clock: the *Vengeance* never got into the Line at all; she could not do it, nor did I expect it from her; her Head was always to me, trying to do it, with all the Sail she could set. To the best of my Recollection, the Line was formed at Half after Three o’Clock. There were Two Ships that formed in the Line ahead that belonged to the Red Division, which was at this Time astern, conformable to the Orders I had sent to the Vice-Admiral of that Division; the Ships Names I did not then know, and therefore it does not come properly from me upon my Oath, but I have been since acquainted they were the *Berwick* and *Monarch*.

Q. Do you know any Thing further concerning the Conduct and Behaviour of Sir Hugh Palliser during the 27th and 28th of July, either before, in, or after the Action, than you have already related, which may be necessary for the Information of the Court?

A. I cannot give an Answer to that Question. Certainly by what appeared at the Court-Martial to which I was brought, a great many Things appeared, but God forbid that I should relate what those Things are! I cannot feel my Mind at Ease a Minute, if I am called to answer that. If I had been the Accuser, it would have been my Duty to the Public to have pointed them out; I thank God I am not the Accuser; they are before the Court. I have not the Admiralty’s Orders quite in my Recollection, but if the Admiralty’s Orders for holding of this Court-Martial require me upon my Oath to answer that Question,

I must do it; but I protest against it from my own Feelings; it is infinitely too delicate for me to answer it. I am sure, Sir, you will see, that no Man before ever stood in the State that I do, and to point out what appears to me, and what hath appeared upon my Trial, which I take to be Crimes against the Gentleman who brought me to that Trial, that is a Thing that no Man, I am sure, in my Situation, would wish to do. The Question may come, if I may be allowed to say so, much more proper to every other Witness than myself, therefore I hope that I shall be excused from pointing out any Thing whatever.

The Court was cleared; in a little Time the Prisoner was brought in, and Audience again admitted,—when the President acquainted the Witness—That

The Court are sitting to enquire into the Conduct and Behaviour of Sir Hugh Palliser on the 27th and 28th of July last, and must therefore desire the Witness to inform them if any Thing reprehensible in the Conduct of Sir Hugh Palliser, which he has not already related, fell under his Observation on those Days; and that, if desired by the Witness, the Admiralty Order for assembling the Court shall be read to him.

The Order was accordingly read.

The Question was going to be repeated, when the Witness observed, That in giving his Evidence he had omitted to mention the *Sandwich*; she was not in a Line at the Time the others were; upon refreshing his Memory he recollected, that she was one of the Five to Leeward in Repair of her Damages, and was then making Sail up to the Center.

The Question was now repeated.

A. My Examination has been so very long, and having taken no Minutes of what I said myself, nor seen any, I protest I hardly recollect completely every Thing that has been asked me. To speak in general Words of the Conduct of Vice-Admiral Palliser, the Prisoner before you, perhaps might not be so right, but I am very ready to say them; I have given him his Praise for going along the French Line like to those other Officers that went before him and after him; he has had his Praise very fully from me for that to the Admiralty-Board; that Praise, and the Mode in which I gave it, have been made Use of in the World very much against me. After the Vice-Admiral had passed the Line (I do not know how many Questions I have been asked about it), but to the fullest of my Recollection, I cannot charge my Memory with seeing him fairly obey any one Signal made, or the Orders I sent him on the 27th. It is very general, and upon that I have been examined; but I cannot recollect exactly the whole Parts, which have made me say this in general. I conclude, the Prisoner will press me where he thinks he has done his Duty, and I am sure, if he refreshes my Memory where I have not done him Justice, I shall feel great Happiness in being of any Use to him, under strict Truth. The 28th of July being added to the Question, perhaps it may be necessary to say a Word—It will be but a Word—That after it was dark on the 27th, I know nothing of the Vice-Admiral of the Blue at all, either from my own Observation, or from any Reports made to me by the Officers, so that I leave the Vice-Admiral at Dark on the

27th, having from my own Knowledge nothing more to inform the Court of.

Prisoner asked,

Q. Did not I visit you on board the *Victory* on the Morning of the 29th of *July*, the second Day after the Engagement?

A. Yes; I do not exactly remember whether it was the 29th, but it was a Day or Two after the Engagement.

Q. Did you then signify to me your Disapprobation of any Part of my Conduct?

A. To that I must answer, I did not; but it did not take from me the Observations I had made.

Q. Did you not then shew me the Draft of your Letter to the Admiralty, giving an Account of the Engagement?

A. I did, but to the best of my Recollection, that was not the Letter I sent. The Letter I sent to the Admiralty was not the Letter I shewed you. I believe I tore it the next Morning.

Q. In that Letter which you did shew me, and in that which you sent, was not my Name mentioned?

A. Yes.

Q. Did we not converse upon different Parts of that Letter, which you was pleased to shew me, particularly that Part which mentioned the *French* being beaten?

A. I think it is most probable that we did converse, but upon the Oath I have taken, I do not remember any one Particular about it; upon the Oath I have taken, I am not correct enough to know upon what particular Parts we did converse; upon that Part of the *French* being beaten, it is very possible I might have done it, but I do not recollect it.

Q. I will endeavour to assist the Admiral's Recollection by asking him, if he does not recollect that I assented to that Part of the Letter, saying, I had observed Two of the *French* Ships as I came along the Line, make a very slack Fire, and that I believed the Men did not stand to their Quarters?

A. The Vice-Admiral does not help my Recollection in this Particular. I do not recollect any Thing about it, but I recollect that I heard—(this is Hearsay, but as it may answer your Purpose I will give it) but I had heard that you had said something to that Purpose to Rear-Admiral *Campbell*, my first Captain, but I myself really and truly do not recollect it. I may add further, that had I ever recollected the Vice-Admiral's Conversation to me, there was a Moment I certainly must have made Use of it, and that is a Proof fairly to me that I do not recollect it.

Q. I will endeavour to bring to the Admiral's Recollection another Circumstance—Does the Admiral recollect my informing him at that Time that the Two last Ships in the Enemy's Rear which I engaged, appeared to be fresh ships, having no Shot Holes through their Sails, and the Admiral's Reply to me upon that I hope he will repeat?

A. I am sure if I could repeat it I would; I believe it cannot be wondered at, that all this Matter should have passed my Recollection. I have had various and many Things upon my Mind—I have not wished to forget any Thing, and therefore I am sorry to forget this, because the Prisoner wishes me to repeat it; but I will add, that I did hear what he states, and to the best of my Memory, I heard he had said it to Admiral *Campbell*, which is just in the same Way, and I am sorry my Memory does not furnish me with it.—He is generally correct in his Notes—I do not take any Notes of Conversation; my Memory is sometimes very good, it is very necessary it should be so; and I do wish I could repeat what the Vice-Admiral calls upon me to do.

Q. Did that Letter which you did shew me contain Approbation of my Conduct?

A. That Letter was torn, I believe; I did not like it upon reading it over; I had many Things operating upon my Mind when I wrote to the Admiralty; I did approve of your Conduct in that Letter; it approved of the Conduct of every Captain. It approved of your Conduct, if you read it over, in passing the *French* Ships; to that, as I have always said, I do not call back my Approbation; it goes fairly with that of the Approbation of the rest of the Officers passing the *French* Ships.

Q. Please to speak as to the Contents of the Letter?

A. I have answered you as to the Contents of the Letter; it was torn, I believe, and I do not recollect what it contained; but the other Letter which I wrote afterwards, gave you some Approbation—that Letter all the World has read over and over, but I thought your passing the Line with the other Captains required my doing you Justice. No Part of this Letter or the other, I believe went farther; but I do not recollect that Letter, it has all passed from me as if such a Thing had never happened; for I do not remember from first to last, but only that you was on board, and I conclude, because you say so, that I must have shewn you the Letter.

Q. Did either the Letter you shewed me, or that you sent to the Admiralty, confine your Approbation to passing the *French* Line?

A. I shall speak no more to the Letter you say I shewed you; for I have got quit of it, and know nothing about it. Respecting the other Letter, if I am pressed for what I meant by it, I must answer it. I had rather the Prisoner did not ask me, because I struggled with my Mind

Q. I did not ask the Admiral his Meaning.

A. I am glad to be stopped; I misunderstood you. Let all the World that can read *English* read the Letter, and I have no more to say upon it.

Q. Whilst we were at *Plymouth*, did you signify to me any Disapprobation of my Conduct, or any Part of it, during the 27th and 28th of *July*?

A. These are Questions I must answer very oddly, or go into all my Opinion about the Vice-Admiral, which does not seem to be contained in his Question.

Q. My Question contains a Desire of an Answer to a Fact.

A. If I am to answer it, I will only say, I am sorry I am to answer it; for I will tell the Court why I did not signify my Disapprobation.

Q. That is not my Question: I beg your Answer, whether you did or did not?

The Question is repeated.

A. I really feel myself more tried now, as to Uneasiness, than I felt myself some Weeks ago. If I am to answer to that Question, Aye, or No, unless I give my solid Reasons, which are upon Oath, this Court will not know, nor can they know, why I did not express my Disapprobation of the Vice-Admiral. I had my Disapprobation, but I did not express it to him.

Q. Whilst we were at *Plymouth*, did you not communicate to me a Letter from the Secretary of the Admiralty, in which his Majesty's Satisfaction at your Account of my Conduct was mentioned?

A. I put that Letter into your Hand; I put it into the Hands of the other Admiral, and as many Captains as came to me. It gave full Approbation of my Conduct, and of that of the other Officers, for the *Victory* the King's Fleet under my Command had gained over the *French* Fleet.

Q. Does it not particularly express the King's Satisfaction

Satisfaction at your Account of the Behaviour of Sir Robert Harland and myself by Name?

The Letter, dated the 2d August, 1778, was read, of which the following is a Copy:

Admiralty-Office, 2d August, 1778.

"SIR,

"I RECEIVED Yesterday by Captain Faulkner, and immediately communicated to my Lords Commissioners of the Admiralty, your Letter of the 30th ultimo; giving an Account of your Proceedings in the Pursuit of the French Fleet from the 24th to the 27th, and of your Engagement with it on that Day. The Earl of Sandwich lost no Time in laying your said Letter before the King; and I have it in Command from my Lords to acquaint you, that his Majesty was thereupon graciously pleased to express the fullest Approbation of your Conduct, and Satisfaction in the Account you have given of the spirited Behaviour of the Vice-Admirals Sir Robert Harland and Sir Hugh Palliser, and of the Captains, Officers, and Men of the Fleet.

"Their Lordships commanded me to send you their Congratulations upon the Victory you have obtained; in Addition to which I beg Leave to offer mine, and have the Honour to be,

SIR,

Your most obedient
humble Servant,

PH. STEPHENS."

*Honourable Admiral Keppel,
Plymouth.*

Q. Before you left Plymouth, did you write any Letter to the Secretary of the Admiralty, commending the Conduct of the Officers of the Fleet under your Command, without Exception?

A. I cannot answer that Question without giving my Reason for writing that Letter.

The Letter was read, dated 20th August, 1778, and is as follows:

Victory, Cawsand-Bay, 20th Aug. 1778.

"SIR,

"I BEG you to inform their Lordships, that the Ships most ready of Vice-Admiral Sir Robert Harland, and Vice-Admiral Sir Hugh Palliser's Divisions, will proceed to Sea To-morrow, and continue off the Sound till I join with the Ships most backward, which I flatter myself I shall be able to do on the next Day.—The *Egmont*, which Ship has been docked, I fear will not be in Readiness to proceed on that Day, but in a Day or two after.

"I shall have great Satisfaction in carrying the very same Ships in Quest of the Enemy's Fleet that came into Port with me, having the fullest Confidence in the Zeal, Bravery, and Exertion of every Officer in the Fleet, as well as Men serving in it.

"The very extraordinary Works that have been expedited by the Officers and People in the Dock-yard, directed by Commissioner Ourry, Mr. Hunt the Surveyor, the Builder, and every other Officer, has been such as to merit much Approbation; I am sure I feel great Obligation to every Department in the Dock-yard.—Vice-Admiral Lord Shuldham has used the utmost Efforts in assisting my Desires, all that was in his Power.

I am,

SIR,

Your most obedient,
and very humble Servant,

Philip Stephens, Esq;

Secretary to the Admiralty. A. KEPPEL."

Q. Do you remember having shewn me that Letter before you sent it?

A. I do not; but if I did not shew it the Vice-Admiral, it was from not recollecting about it. I never received any Letter that I did not shew him; I took him to my Aid when I could. The Reason I wrote that Letter, and I see no Reason for being stopped in saying why I wrote that Letter—there were more than one Captain in the Fleet that were reflected upon; there were some who felt it very nicely. I wrote that Letter to the Admiralty, that they might, if they pleased, give it to the World, that I thought well of those Captains. They are not mentioned at all. There is one of them a Member of this Court, whose Bravery and good Conduct I have no Reason to doubt of; but he had delicate Feelings. There was another Officer, who was abused in the Newspapers, and his Feelings about Newspapers differed very much from mine; he felt it much, and he came to me very uneasy. I thought those two brave Commanders should not go to Sea with any Uneasiness in their Breasts, and therefore I wrote that Letter in general Terms, that the First Lord of the Admiralty might either put it in Print, or shew it to any Gentleman he pleased. Such was my Opinion of those Officers, and such is still my Opinion of those Officers; and I like to reconcile Matters for the Good of my Country in that Way, and not in another. The Officer I allude to is here. I sent the Extract to him; I thought it would be comfortable to his Mind.—In regard to the Vice-Admiral, if I did not shew it to him, it was because I had forgot to do it. The other Captain I did not send it to; but neither from any Disrespect to him, or thinking differently of him than I had expressed before, but merely from forgetting it.

Prisoner had no further Questions to ask.

The Witness was discharged from further Attendance.

Withdrew.

Vice-Admiral John Campbell.

The Order for holding the Court-martial read.

He was then sworn.

Q. Relate to the Court any Thing you know concerning the Conduct and Behaviour of Vice-Admiral Sir Hugh Palliser on the 27th and 28th of July last.

A. I shall, agreeable to the Oath I have taken, give Answers to any Questions the Court may think proper to ask me; but I cannot, at this Distance of Time, undertake to relate a History of the Conduct of Sir Hugh Palliser, or the Conduct of any Officer. I will, to the best of my Knowledge, give Answers to any Questions that the Court think proper to propose to me.

Q. Give an Account to the Court relative to the Position of the Vice-Admiral of the Blue at Day-light on the 27th of July, and of his Proceedings till he came into Action.

A. The Vice-Admiral of the Blue, in the Morning of the 27th, was to Leeward of the *Victory*. I judged then, and mentioned it, I believe, it was about Three Miles, rather before the Leeward, with the greatest Number of the Ships of his Division round him, some to Leeward of him, and some astern. I do not recollect that any of them were ahead of him, and some were to Windward. His Mainmast was up, and all the Two-decked Ships near him were under easy Sail. He was considerably farther to Leeward than he had been at the Close of the preceding Day; so much as surprised me, and the other Officers that were upon the *Victory's* Deck; and as he was not more weatherly

weatherly than the *Victory*, I was a good deal surprised that the Mainfall should be up, because by that Means he was falling faster to Leeward. He could not keep so good a Wind as we did with our Mainfall set. As the Enemy were directly upon our Weather-beam, I wished to have his Ships agreeable to the Order that had been left with me by the Admiral, and what had been done before. In the Evening the Admiral's last Orders were always to keep the Ships under his Command as much compact together, and as much to Windward, as possible. The Enemy seeming to avoid us, by keeping to Windward, I made a Signal for the Ships under easy Sail to chase to Windward, which appeared to me the most eligible Means to get them to Windward, to close in with the Center, and to get them as near the Enemy as possible. At a preceding Trial, the making that Signal occasioned much to be said, and great Animadversions were made upon it. I did then, and still do think, that it was the properest Signal that could be made upon that Occasion; and I shall be much obliged to any Body, if they could point out to me a properer; it might be of Use to me hereafter. It has been endeavoured to be shewn, that it must necessarily occasion those Ships whose Signals were made to get farther from the Center, and from the Enemy, than they were before. I say the Tendency of that Signal had a quite contrary Effect in my Understanding: Whatever Effect it produced, is another Thing. That Signal was made; and very soon after it was made, the Admiral was acquainted with it, and he approved of it. The *French*, as I had Occasion to say in a former Evidence, were farther to Windward in the Morning than they had been in the Evening. Between Eight and Nine, I believe, they went about on the other Tack. The two Fleets would soon have been separated, if we had not tacked after them: So the Admiral ordered the whole Fleet to be tacked together, which was accordingly done; and by a Shift of Wind, and other Circumstances, the two Fleets came into Action between Eleven and Twelve o'Clock.—I forgot to mention, that the *Formidable* made additional Sail immediately upon the Ships passing her whose Signals had been made to chase.

Q. Did it appear to you that Sir Hugh Palliser did all in his Power to bring the *Formidable* into Action?

A. I believe he did. After we tacked to stand towards the Enemy, I believe he did every Thing in his Power.

Q. Did it appear to you, that, during the Engagement, he behaved as became an Officer of his Rank and Station in the Fleet?

A. I do believe he did. I saw very little of him in the Action; I once looked for him, and did see him; but I believe he did every Thing he ought to have done.

Q. Did you look to the *Formidable* upon her coming out of Action, and what was her Position relative to the *Victory* at that Time?

A. I do not recollect seeing the *Formidable* after she came out of Action, till a very little before her passing the *Victory*, when our Head was towards the Enemy, and the *Formidable* upon the other Tack.

Q. Were any Signals made by Admiral Keppel upon the *Victory's* coming out of Action?

A. Yes; not immediately upon her coming out of Action, but very soon after—immediately upon the Action ceasing.

Q. What were those Signals, and what Purposes were those Signals to answer?

A. The Signal was made to wear, and the Signal for engaging was ordered to be hauled down.

Q. At what Times were those Signals made, and did the *Formidable* repeat or obey the Whole or any Part of them?

A. The Signal for wearing was made immediately after the Firing ceased. Orders were given for it immediately, and it was made as soon as it could be bent; but I believe it was made above Ten Minutes before we could wear in the *Victory*, because there were some Ships upon our Lee-quarter, that we could not wear without being in Danger of being on board; but between Ten Minutes and a Quarter of an Hour after it was made, we wore in the *Victory*; and as soon as we were wore, the Signal for the Line of Battle ahead, I think a Cable's-length asunder, was made.

Q. How long was the *Victory* on the Larboard Tack?

A. To the best of my Remembrance, about an Hour and a Quarter. I cannot speak very precisely to Time, unless I had the Minutes; it was thereabouts. We wore some Time before Two; and I remember, from the Minutes, it was exactly Seven Minutes after Three when we wore from the Larboard to the Starboard Tack again.—There was one Part of the former Question which asked, Whether the *Formidable* repeated the Signals? I did not see her; I had not taken Notice of her.

Q. What was the Position of the *Formidable* at that Time, and did she obey those Signals, while the *Victory* was on the Larboard Tack?

A. I have already said, I did not take particular Notice of the *Formidable* till she was approaching us upon the Starboard Tack, while we were upon the Larboard Tack. Of course, I cannot tell whether she repeated or obeyed the Signals.

Q. Did the *Formidable* obey or repeat the Signal for the Line of Battle?

A. The *Formidable* did not obey the Signal for the Line of Battle the whole Day; neither when we were upon the Larboard nor the Starboard Tack, that I saw. Her passing us on the Starboard Tack while we were on the Larboard, was acting in direct Disobedience to the Signal, so far from obeying it; nor did I ever see her repeat the Signal for the Line the whole Day.

Q. Do you think, in passing the *Victory*, that the *Formidable* could have seen the Signal for the Line?

A. It is impossible she could pass her without seeing it, if she looked for it. But the *Victory* was not the Ship the *Formidable* was to look to for the Signal for the Line; she was to look to the Repeating Frigate.

Q. Which was the Repeating Frigate?

A. The *Arethusa*, Captain Marshall.

Q. Did you observe that the Signals were repeated on board the *Arethusa*?

A. Yes, very soon after they were made on board the *Victory*.

Q. Was the *Arethusa* so situated, that the *Formidable* could see her, as you supposed?

A. That was one Thing it was my Duty to look to, to see whether Signals were repeated by the Repeating Frigate. I looked for her when it was first made, and saw it repeated. She had been to Leeward; she was then working to Windward, to get upon our Weather-beam; and the first Time I saw her, after we had wore upon the Larboard Tack, she was on the *Victory's* Lee-bow, with the Signal flying. I did not see her tack, but she could not have got upon our Weather-beam without making some Trips; and she was soon afterwards upon our Weather-beam. I did not, just at that Time, see the *Formidable* to take Notice of her; nor did I pay much Attention to the Repeating Frigate, after I saw that she had repeated the Signal.

Q. Were

Q. Were any other Signals made to enforce a Compliance to the Signal for the Line of Battle, or were other Means used to convey Orders to the *Formidable*?

A. After we had wore, and the Admiral's ordering the *Victory* to be kept away large, in order to go down to succour some Ships that the *French* Fleet, upon their wearing, seemed to point to, we, of course, ran to Leeward of the Ships that were near us; and upon the *Formidable's* not following us down, but keeping her Wind, and some other Ships with her, the Signal was made, I believe, not quite an Hour after we wore; but about three Quarters of an Hour, the Signal for Ships to Windward to bear down into the Admiral's Wake. The first Time that it was hoisted, the Admiral ordered the Signal for the Line of Battle to be hauled down, that the blue Flag might appear more clearly, for fear of any Confusion in the Signals; but it was not kept down more than Ten Minutes at most, and then it was hoisted again; and that was the only Time it was hauled down from the Time of its being first made till after Dark.

Q. Did the *Formidable* obey the Signal for Ships to come into the Admiral's Wake?

A. I have already said, the *Formidable* did not obey the Signal for the Line of Battle, which

would have been the same Thing, the whole Day! She did not come into the Admiral's Wake: She repeated the Signal for Ships to come into the Admiral's Wake, by hoisting the blue Flag at the Mizzen-peak; but did not bear away herself, nor make any Attempts towards it, that I saw; and I watched her with much Anxiety and Attention indeed, because it was a very anxious Time.

Q. Were any other Means made use of to convey Orders to the *Formidable*?

A. The *Fox* was sent with Directions for her coming down with the Ships of the Blue Division with her, as the Admiral only waited for that to renew the Action with the *French* Fleet.

Q. Did it appear to you that the *Fox* joined the *Formidable* with those Orders, and when?

A. It was about Five o'Clock, or very near Five, when I hailed the *Fox* to deliver those Orders. I cannot precisely say when she joined the *Formidable*; it might be about Half an Hour after; I do not know the Time.

Q. Did the *Formidable* bear down, in Obedience to the Orders sent by the *Fox*?

A. I have already said, she did not bear down the whole Afternoon, or make any Attempt towards it, that I saw.

Adjourned, being near Four o'Clock, till To-morrow Morning at Nine o'Clock.

F O U R T H D A Y.

THURSDAY, the 15th of APRIL, 1779.

THE Court met according to Adjournment. The Prisoner brought in, and Audience admitted.

The Court, by a Message from Captain *Cranston*, one of the Members, was informed of his being ill, and unable to attend.

Mr. John Lucas, the Surgeon of the Defence, attending, was called in and sworn.

He gave Information touching Captain *Cranston's* Disorder.

Resolved to adjourn till To-morrow Morning at Nine o'Clock, when the Surgeon is to attend again.

Adjourned accordingly.

F I F T H D A Y.

FRIDAY, the 16th of APRIL, 1779.

THE Court met according to Adjournment. The Prisoner was brought in, and Audience admitted.

Mr. Lucas again examined.

Captain *Cranston* continuing very ill, without

any Probability when he may be able to attend his Duty in Court:

Agreed, That he may absent himself from further Attendance, as the Number of the Members remaining exceeds the Number, required by Law, for the Court to be composed of.

THE Members, upon Captain *Cranston's* Absence, took fresh Places, and now sit as follows:

P R E S I D E N T,

Vice-Admiral *Darby*.

Rear-Admiral *Digby*.

Captains *Sir Chaloner Ogle,*
Joseph Peyton,
Mark Robinson,
Samuel Cranston Goodall,
John Colpoys,

Captains *Richard Kempensfeldt,*
William Bayne,
Adam Duncan,
Robert Linzee,
George Robinson Walters

E

Vice

Vice-Admiral Campbell called in again.

Q. Did Vice-Admiral Sir Hugh Palliser, by Signal or otherwise, signify to the Commander in Chief his Incapacity to obey the Signals which were made on board the *Victory*, or the Orders that were sent him?

A. No, he did not.

Q. Did you yourself perceive any Disability in the *Formidable* to obey those Signals or Orders, or did the *Fox* return with any Message from the Vice-Admiral?

A. No, I did not see any Disability in the *Formidable* to obey the Signal.—She was with her Foretopfail unbent for several Hours; but I could not look upon a Ship with her Foretopfail unbent, without any other apparent Damage, as being in a disabled State. The Admiral and I had much Reasoning upon what could prevent her obeying the Signal. My Fear was, that it proceeded from the Vice-Admiral's being wounded; it never entered into my Head that it proceeded from the Ship's being disabled, because, if it had, I should have taken for granted that he would have immediately either informed the Commanding Officer of it, or have shifted his Flag on board some other Ship of his Division; either of which he had the Means of doing. The *Fox* did not return any more to us that Afternoon.

Q. Was the Weather such, that a Boat could pass from Ship to Ship?

A. Undoubtedly—more than one had come on board of us, and returned to their proper Ships.

Q. Was not Captain Marshall ordered by the Admiral, immediately before the *Victory* wore to the Southward, to come on board, and what Orders did he receive in consequence of it, and from whom?

A. I do not recollect the Occasion of Captain Marshall's being called—I saw him on board, and spoke to him, but he neither received any Orders through me, that I remember, nor do I recollect the Occasion of his being on board.

Q. What was the Position of the Vice-Admiral of the Blue, from Five o'Clock till Seven in the Afternoon, with respect to the *Victory*?

A. The *Formidable* was so far upon the *Victory*'s Weather Quarter, that, when the *Fox* made sail upon the Larboard Tack, to stand towards the *Formidable*, she did not fetch her upon that Tack. I do not know how many Points she was wide upon that Quarter. I did not see the *Fox* actually in Stays, but I saw that she had put about before she joined the *Formidable*.

Q. What Distance was the *Formidable* from the *Victory*, when the *Fox* was sent to her?

A. It is not easy to ascertain Distances at Sea—I think nearer Three Miles than Two, but about Three Miles—better than Two, I think.

Q. Was the Red Division, at that Time, in its Station in the Line ahead, and what was the Number of Ships, at that Time, joined with the Center, in the Line of Battle?

A. No, the Red Division was not in its Station in the Line ahead at that Time. A very few Minutes before the *Fox* was sent to the *Formidable*, another Frigate, I think the *Milford*, was dispatched to the Vice-Admiral of the Red, to order him to form ahead; he had before been ordered to form astern, and was then a little upon the *Victory*'s Weather Quarter, a considerable Way astern. All the Center Division were connected; but just before Five, to the best of my Remembrance, there were two of them, which were stationed astern upon that Tack, had formed ahead.

Q. Was the *British* Fleet, at any Time in the

Evening of the 27th, in a Situation to have re-attacked the *French* Fleet, if the Vice-Admiral of the Blue, with his Division, had come down and formed in the Line?

A. I do not think that the Center Division had been collected enough before Five o'Clock to admit of our going down.—It was about Five, or very near it, before the Center Division was connected in a Line; and, till that was done, the Admiral did not seem to be disposed to go down.

Q. At what Time, or how soon in the Evening, was the *British* Squadron in a Situation to have re-attacked the *French* Fleet, and how did the headmost Ship of the *French* Fleet bear at that Time?

A. At Five o'Clock, the headmost Ship of the *French* Fleet was before the *Victory*'s Beam; I think, to the best of my Remembrance, they went faster than the *British* Fleet, but I do not know exactly how they bore. We should have bore away as soon as the Vice-Admiral of the Blue and his Division had come down—the rest of the Ships were connected enough at Five o'Clock. I thought, when we wore at Two o'Clock to stand towards the *French* Fleet, the Admiral would have gone on, even without getting all his Ships into a regular Line, if all his Ships had had their Heads the same Way that we had; but as some of his Ships were then on a contrary Tack to us, we could not go on;—a great many had not wore the same Way we did, even when we wore a second Time. The Admiral expressed his Inclination and Desire to go on, when we wore the first Time at Two o'Clock; but he could not go on while a great Part of his Fleet were standing with their Heads the contrary Way, and he did not know how soon they might get round to follow him.—Several had not wore when we wore the second Time, but were standing upon their Starboard Tack—they had not wore, or, if they had wore, they had re-wore again; for, when we wore, there were several of them standing upon the Starboard Tack, away from the *French* Fleet on the contrary Tack, and therefore the Admiral could not proceed till all the Ships had wore, at least to be in Readiness to follow him, if they were not in a proper Line: The Vice-Admiral himself was standing upon a contrary Tack, as has already been said.

Q. How did the headmost Ship of the *French* Fleet bear from the *Victory*, at the Time the Center and Van were in Line of Battle, and at what Distance?

A. They were still getting further ahead, but slowly, all the Afternoon—I have described how they were at Five.

Q. Did the Admiral determine to attack the Enemy after Five o'Clock, without waiting for the Line being completely formed?

A. Yes, he had all along to me expressed his Desire of attacking them, as soon as he could get his Ships collected together, whether they were in a regular Line, according to the prescribed Order of Battle, or not. He wanted them to be in a Situation to support each other—that was his Conversation to me.

Q. How did the headmost Ship of the *French* Fleet bear from the *Victory*, at the Time the Center and Van were in Line of Battle, and at what Distance?

A. The Red Division got very soon into their Station after the Message was delivered to Sir Robert Harland for his going into it; they carried a great Deal of Sail indeed, and Sir Robert weathered us, I am sure, better than a Mile; but he soon got ahead into his Station. I have already informed the Court how the *French* Fleet were

were situated about Five o'Clock; they were still gaining a little, very slowly, going ahead; they were drawing faster ahead than the *English* Fleet were, I believe they might be at Five o'Clock about Two Miles to Leeward, I think not more. One Thing I beg Leave to remark, that in describing about the *Victory's* Beam, we had not, I believe, altered our Course; at Five o'Clock we hauled up, just about Five, having completed our Junction with some of the *Lee* Ships, and that might occasion the headmost of the *French* Ships perhaps to be rather abaft our *Lee*-beam; I think we were at Five steering rather larger than we did afterwards, because we steered several Courses during that Afternoon to get down to those Ships to Leeward, and after we had joined them, we kept our Wind all the rest of the Day and Night; that is, after we had got so near them as to prevent their being attacked.

Q. Was the Wind favourable for the Vice-Admiral of the Blue to get into his Station?

A. Certainly, the most favourable Wind that could be.

Q. Did it appear to you that the Disobedience of the Vice-Admiral of the Blue to the Signals and Orders which have been mentioned, was the Reason why the Attack was not renewed?

A. The Reason why the Attack was not renewed was the Impossibility of our collecting the Ships. I am convinced, if the Fleet could have been collected, the Attack would have been renewed, or attempted to have been renewed. If the Vice-Admiral of the Blue's Division had come down, and been connected as the rest of the Fleet were between Five and Six o'Clock, I am convinced the Admiral would have attempted to have renewed the Action, or whenever the Fleet could have been collected, he was resolved to do it, I believe before a Quarter after Seven; I believe it was between Seven and Eight, when he said he could think no more about renewing it that Night. At any Part of the Day that we could have collected the Fleet, he would have gone to re-attack them.

Q. Can you ascertain the Time when the Van Division got into its Station in the Line of Battle, and how the headmost Ship of the *French* bore from the *Victory* at that Time?

A. I should judge Sir *Robert Harland* and his Division were in their Station about Six o'Clock, but I really do not know, for I made no particular Remark of it; to the best of my Judgment, it was about Six when they got into their Station. The headmost Ship of the *French* bore at that Time before our *Lee*-beam, but how much I do not know. These are Points I did not pay so minute Attention to, as to be able to give precise Answers to them upon Oath.

Q. Did the Admiral assign any Reason for the Red Division being placed in the Rear, and what Time did it take place?

A. The Admiral, while our Head was to the Northward, and we were upon the Larboard Tack, had given Directions for a Frigate's going to Sir *Robert Harland*, to give him Orders to form ahead, as we had then no Ships ahead of us; and of course when we wore a second Time we had no Ships ahead of us immediately upon our wearing, because our Stern was to the Northward then, as our Head had been before; I believe that was the Reason why the Admiral ordered the same Frigate, for the Captain of the Frigate that he had given those Orders to was on board; he had not immediately gone away, and before he got out of Hail, he had Orders to go and direct Sir *Robert Harland* to form again; it was when we wore the second Time that those Orders were dispatched to

him. To the best of my Remembrance, it was Captain *Sutton* the Orders were sent by.

Q. You mentioned before the *Admiral* being sent to Sir *Robert Harland*.

A. That was at Five o'Clock.

Q. At what Hour did the *Formidable* come into her Station in the Evening of the 27th of July?

A. I have already said, that I never saw the *Formidable* bear away the whole Afternoon, or make any Attempt towards it. After it was remarked the *Formidable* did not bear away, I paid particular Attention to her Motions; it occasioned my watching her narrowly, because I was anxious about her coming down; and from a little before Four till about a Quarter after Seven, I looked at her frequently—often with a Glass, sometimes without a Glass, and I do not recollect ever watching any Thing with so much Anxiety and Concern as I did the Motions of the *Formidable* for that Time, and I never saw her bear away, or make any Attempt towards it. From the Time the Admiral had given up the Thoughts of going down to the *French* Fleet, I do not remember paying much Attention to the *Formidable*, and she might have edged away after that without my knowing it; but I am sure she did not edge away till between Seven and Eight o'Clock, if she did at all; I never saw her do so, and I never understood that she did; but I am sure she did not get into her Station while there was Daylight enough for our seeing that she had done so.

Q. Did the *Victory* carry her distinguishing Lights in the Night of the 27th July?

A. She did; and Orders were given for every Socket in each Lanthorn to have a Candle—they had generally omitted one before, but there was as much Light in each of the Lanthorns as could be put, and an additional Light at the Bow-sprit End the whole Night.

Q. Did you see any Lights on board the *Formidable* the Night of the 27th of July, to distinguish her as a Flag Ship?

A. I did not see any Thing of the *Formidable*, or of her Lights, after the Day closed in.

Q. Were any Means made Use of by Signals or otherwise, from Seven o'Clock in the Evening till Daylight next Morning, to convey Orders to the Vice-Admiral of the Blue?

A. No; about Seven o'Clock there were several Pendants for different Ships of his Division to come down, I think it was about Seven o'Clock they were let fly; to the best of my Recollection, for all his Division except his own Ship.

Q. In what Position was the Vice Admiral of the Blue at Day-break in the Morning of the 28th of July?

A. I do not recollect. At Day-break in the Morning of the 28th, my Attention was principally taken up with Three *French* Ships discovered to Leeward, and in looking out for proper Ships to send to chase them, as the Admiral had directed.

Q. Did you see distinguishing Lights on board the Vice-Admiral of the Red on the Night of the 27th of July?

A. Yes; I saw them soon after the Day closed in, but I did not afterwards pay much Attention to them; I did not indeed look for them.

Q. Was not the *Victory* a good Deal damaged in the Action with the *French* Fleet?

A. We had our Masts and Yards wounded, and some of our Rigging cut, and some few Shot in the Hull. One of the Lower deck Ports was so much shattered as to require being mended before we wore. We had very little Damage, except in the Masts, Rigging, and Sails.

Q. How long was it before she was ready to get into Action again?

A. We

A. We should have stood on immediately upon our wearing, at Two o'Clock, to have got into Action, if the Ships had been collected; but seeing that a great many of them were far astern, and had not wore, we took that Opportunity of unbending our Maintop-sail, which was a good deal cut below the Lower-reef.—We had first thought of reefing it; but being cut below the Lower-reef, was liable to give way; and therefore we took that Opportunity of bending a new one, as we saw we could do it before there was a Possibility of those Ships astern joining us: We should not otherwise have unbent it, I believe, because the Admiral opposed it when it was proposed; and he came into it upon that Reason being assigned to him, that we could do it without any Loss of Time.

Q. When the *Victory* wore to the Southward, with the Signal for the Line flying, was it not meant, by that Evolution, to collect the Ships and form a regular Line of Battle before you engaged the Enemy again?

A. The principal Use of it was to collect the Ships as fast as possible; but the Commander in Chief, notwithstanding that Signal, had it in his Power to edge away, or make a Signal for so doing, when he pleased. The Signal for the Line of Battle was, of all others, the fittest Signal, in my Opinion, for immediately collecting the Fleet; it being the Signal, of all others, which commands the most speedy Attention and punctual Obedience.

Q. When the *Victory* wore to the Southward, and edged away from the Wind, how long did she continue in that Direction before she hauled upon a Wind again?

A. She did not haul upon a Wind till after Five o'Clock; about some little Time after, as well as I can recollect. We did not constantly keep going large; the Intention of bearing away was to get between the *French* and those Ships which had not wore; we conjectured they would have wore, if they had not been disabled; their having laid there without wearing, we took it for granted it was because they were in a State not fit to wear. I do not recollect the exact Time that we hauled upon a Wind; the Log-book, I suppose, will shew that.

Q. What Sail was the *Victory* under, and did she increase her Distance from the *Formidable*; and if she did, how much, in Consequence of her bearing away to join our Ships to Leeward?

A. Our Distance from the *Formidable* was altering continually. The *Formidable* had passed to Leeward of us before we wore, as well as I recollect, about a Quarter of an Hour before; and we wore and edged away, and she keeping her Wind, of course we ran to Leeward of her Wake, and so continued to increase our Distance to Leeward during the whole Time we steered from the Wind. I have already said, that at Five o'Clock, when we dispatched the Frigate, the *Formidable* was about two Miles upon our Weather-quarter. I remember Sir Robert Harland, when he was ordered ahead, and passed us between Five and Six, weathered us, in my Opinion, about a Mile, and went considerably to Leeward of the *Formidable*. He passed between the *Formidable* and us, when he was making sail from having formed astern, to get into his Station ahead. I cannot ascertain the true Distance; I wish I could.

Q. Did the *Victory* increase or near her Distance from the *Formidable* after the *Victory* hauled her Wind?

A. No; I do not recollect that there was such an Alteration as to be perceptible; I do not think

there was; but I did not pay so minute an Attention to it, as to be able to speak positively to that Point.

Q. Were all or any of the Ships of the Blue Division in the Line in the Course of the Evening?

A. Several of them bore down when their Pennants were thrown out, and some of them were pretty near in a Line about Eight; but I do not think the whole Evening any of them were directly astern of the *Victory*; I did not see any of them.

Q. When the *Victory* was on the Starboard Tack, with the Signal for the Line of Battle flying, did she carry so much Sail as to prevent the Vice-Admiral of the Blue from getting into his Station?

A. The *Victory*, I think, when we went down, had her Fore-sail and double-reefed Top-sails. I do not believe we went above Three Knots, or Three and an Half, any Part of the Time; but I have already said, the *Formidable* never did attempt to get into the Line that I saw.

Q. Was the *Formidable* left quite alone, when the Rest of the Division was got down, as you have described?

A. No; I think there was one Ship that did not bear away, and another that was standing upon the contrary Tack towards her, as well as I recollect, about that Time; but I have already said, that after the Admiral had given up the Thoughts of engaging, I did not pay very much Attention to them.

Q. What Course should the *Formidable* have steered, as it appeared to you, to have got into her Station in the Line of Battle, when you was on the Starboard Tack, about Five o'Clock in the Afternoon?

A. She was, in my Opinion, about four Points upon our Weather-quarter; and as her Station was considerably astern, she must have bore away from the Wind very considerably, to have got into her Station.

Q. Did Admiral Keppel express his Disappointment at the Vice-Admiral of the Blue's not bearing down; and do you recollect what his Expressions were?

A. He expressed much Disappointment, Uneasiness, and Displeasure at it; but the Conversation that passed between him and me upon that Occasion was much too long for me to attempt to remember it. I remember he once, upon the Quarter-deck, said, with more Warmth than is usual to him, that he could not have believed he should have been so ill obeyed.

Q. What Sail did the *Victory* carry during the Night of the 27th; and at what Rate did she go that Night?

A. We took in the third Reef in the Top-sails at Eight o'Clock, just as the Bell rang; and we furled the Mizentop-sail, that it might not obstruct the Maintop-light from the Ships astern. I am not very sure whether the Mizentstay-sail was hoisted or not; I think it is very possible that it was; but it is so long ago, that these minute Things cannot be ascertained with Precision; and we kept our Fore-sail and our treble-reefed Top-sails all Night; the Mizentop-sail was furled all Night, and perhaps the Mizentstay-sail was set; but I do not know whether that was set or not; I am more inclined to think it was, as the Ship carried a Lee-helm, then under easy Sail. I remember the *French* Fleet, immediately after we began to reef, lowering their Top-sails down, and reefing them; but what Reefs they took I do not know; I do not recollect the Rate of our going, but we went very little through the Water; the Log-book will

shew that better than I can. I might add, that the Mizen was not hauled out; because the Signal for the Line of Battle was still flying, and the Mizen's being hauled out would obstruct the Sight of that. Perhaps it might be hauled out after Dark; I am not sure of that; but it was not then hauled out for that Reason.

Q. What Sail had the *Formidable* set from the Time you passed her on the Starboard Tack, till Seven o'Clock in the Evening?

A. The first Time after our passing her, and being to Leeward, that I looked at her, I saw that the Foretopfail was unbent, and I never did see it bent the whole Afternoon; I cannot say what Sail she had set, she was without her Foretopfail whenever I looked at her; I could, with the Glass, see that the two Top-gallant Studdingfail-booms were triced up to the Shrouds, ready for bending the Topfail, and I spoke of it to the Admiral, when he was expressing his Uneasiness at her not coming down; and I once did say to him, "Sir, I now see some Man going into the Foretop; I hope they are going to bend their Foretopfail, and I hope they will bear away directly."

Q. After the Rear of the *English* Fleet were out of Action, did not the Vice-Admiral of the Blue, with some Ships of his Division, wear and lay their Heads towards the Enemy, before the *Victory* wore the first Time and laid her Head to the Northward: If so, how long did the *Formidable* and those Ships lie in that Position?

A. I have already said, that after the Firing ceased, I did not take particular Notice of the *Formidable* till a little before the two Ships met upon the contrary Tacks, the *Formidable* upon the Starboard and the *Victory* upon the Larboard Tack; and I never saw her wear towards the Northward, nor did I ever hear she had so done, till Sir *Hugh Palliser* himself told me so, in a Conversation we had at Mr. *Keppel's* House in *London*; and I could not easily credit it, because I did not think that any Ship, after having wore with her Head towards the Enemy, would have presumed to have wore from them again till he had been ordered so to do by his commanding Officer, especially while his commanding Officer was standing towards them; and I believe the Vice-Admiral may recollect my expressing myself to him to that Effect when he first told me of it.

Q. What were the Number of Ships of the Blue Division which were ordered to chase by Signal at Day-light on the 27th?

A. To the best of my Remembrance there were six or seven, they were all those I observed going under easy Sail; the Signals were not all made at the same Time, for I could not at first find out what Ships they were; I was looking at them, and as soon as I could discover what Ships they were, and saw them under easy Sail, then their Pendants were thrown out.

Q. Do you think there was Day-light enough at Eight o'Clock in the Evening of the 27th *July* for renewing the Action?

A. The Ships were not come down; there was Day-light enough for edging towards them, but Night must have shut in before we could have joined Battle with them; that is my Opinion, and it is mere Matter of Opinion.

Q. Do you know of any Thing further concerning the Conduct and Behaviour of Sir *Hugh Palliser* during the 27th and 28th of *July*, either before, in, or after the Action, than you have already related, which may be necessary for the Information of the Court?

A. I said at first that I could not undertake to give a Narrative of the *Formidable's* Proceedings; the Action happened a great many Months ago:

To all such Questions as you think fit to put to me, I will give the best Information to the Court that I can; but without a specific Question being put, I do not chuse to say any Thing about his Conduct upon that Day.

Q. It is quite a simple Question; it is not what you recollect, but only whether you do recollect any Thing more?

A. I understand the Question perfectly: The Court has asked every Question from Beginning to End that I think is necessary, I do not recollect any Thing at present.

Prisoner asked,

Q. What do you understand to have been the Order of Sailing in Force on the Morning of the 27th *July*?

A. We were in the Morning of the 27th *July* on the Larboard Tack, consequently the Vice-Admiral of the Blue, and his Division, should have been upon the Larboard Quarter of the *Victory*, and the Vice-Admiral of the Red, and his Division, upon the Starboard Quarter of the *Victory*.

Q. Do you recollect when was the last Time the Fleet was formed in a Line before the Engagement, and upon what Tack?

A. I think on the second Day of our seeing the Enemy, in the Afternoon, was the last Time; but this is a Question on a Subject which happened so long ago, that I may be mistaken.

Q. Do you remember, that when the Fleet was in a Line that Evening, the Fleet was tacked by Signal all together, and the Signal for the Line hauled down?

A. No, I do not remember it; the two Courts Martial which the Action of the 27th *July* has been productive of, having been confined to the 27th and 28th, I have not taken so much Pains to call Things to my Mind at any other Period of the Cruise, as I did upon those two Days; but I believe it might be as the Vice-Admiral states it, and I am inclined to think it was so.

Q. Do you understand that when a Signal is made for the whole Fleet to tack together, under the Circumstances before described, that the respective Divisions are enjoined to preserve their then Positions from the Admiral?

A. The Signal for the Line was hauled down, as the Vice-Admiral describes it, previous to the tacking, as I understand, but I think it is much better that they should preserve their Situations; and I believe there were Orders given for that Purpose in a second Cruise, to prevent the Confusion of the two Divisions running through each other at any Time on tacking to get into their proper Stations, but there was no such Order then, but, indeed I think it the best Way; and if this was the Case, and I believe it, the Vice-Admiral of the Blue, and his Division, would then have been considerably upon the Weather-quarter of the *Victory*; because, if we were in a Line ahead upon one Tack, and tacked all together, then the Head-ships would be considerably upon the Weather-quarter of the commanding Officer upon the other Tack.

Q. Explain on what Tack you were.

A. As the Vice-Admiral states it, I think the last Time the Signal for the Line was out was when we were upon the Larboard Tack on the second Day in the Afternoon, after seeing the *French* Fleet; if a signal was then made for the Fleet to tack together, and the Signal for the Line hauled down, undoubtedly the Vice-Admiral of the Blue, with his Division, would be wide upon the Quarter of the commanding Officer, when we were upon the Starboard Tack—It must be so if he was ahead upon a Wind, and then,

then, by this way of Reasoning, he should have preserved the Weather-quarter constantly.

Q. When the Fleet tacked the last Time before the Morning of the 27th, was it not by Signal for the whole Fleet to tack together?

A. I do not recollect it, but I believe the Minutes that were delivered in to the former Court-martial by Mr. Moore will shew it; I have seen them, and he kept a very particular Account of all the Signals, and the Tacking; both he and Mr. Rogers, by the Admiral's Orders.

Court asked,

Q. Do you mean that Sir Hugh Palliser was expected to have been on the Larboard-quarter of the *Victory* at Day-light on the 27th July?

A. When one Fleet is in Pursuit of another that is in Sight, I think the Order of Sailing has very little to do with the Business: The *French* Fleet had been, in my Opinion, endeavouring to avoid us by keeping to Windward; and it was the Business of Sir Hugh Palliser and of Sir Robert Harland, both of them, to be as much to Windward as the *Victory* was, if they could have got there—If Sir Hugh's Ship had been weatherly enough to have been on the Weather-quarter of the *Victory* at Day-light on the 27th, I think he ought to have been there; he should have endeavoured to have been as near the Enemy as his commanding Officer was.

Prisoner asked,

Q. Was not the Red Division upon the Admiral's Larboard-quarter on the Morning of the 27th?

A. Yes.

Q. Was not the Vice-Admiral of the Red placed in that Position by the Admiral's Signal for the Fleet to tack all together, and I placed in a different Position by that Signal?

A. No, I do not think so; the Vice-Admiral of the Red was wide upon the Weather-quarter of the *Victory* in the Morning of the 27th, and considerably to Windward.

Q. After the Admiral had passed the Enemy and wore, and stood back to the Northward, did not the *Victory* stand all that Time directly for the *Formidable*?

A. I have already said, that I did not see the *Formidable* till we were very near meeting; she must do so, because the *Formidable* was astern of us when we came out of Action; I believe the *Formidable* was a little upon our Lee-bow till we met, we must stand pretty near for each other if we were upon contrary Tacks.

Q. After the *Victory* stood to the Southward, what Sail did she carry all the Afternoon?

A. I have already declared that we were, to the best of my Remembrance, under double-reefed Topsails and Foresail, I do not know whether our Maintopmast-stay-sail was out, but I think not.

Q. Was the Mizzen out?

A. The Mizzen was not out, because it was never suffered to be out when the Signal for the Line was flying.

Q. Do you recollect any Thing of the Mizzen-stay-sail?

A. I do not think it was out, because we were edging away from the Wind the greatest Part of the Afternoon—I am pretty sure it was not—I gave particular Attention never to suffer the Mizzen to be hauled out while the Signal for the Line was flying.

Q. Did the *Victory* lay-to any Part of that Afternoon?

A. No, no Part of it.

Q. You have said, that the first Time the Signal was made for Ships to Windward to bear

down, it was up only a very short Time, I would ask why it was then hauled down?

A. I did not say any such Thing; I said, when it was first made, the Admiral ordered the Signal for the Line to be hauled down, that the Blue Flag at the Mizzen-peak might be more distinctly seen; but the Signal for the Line was kept down only a very few Minutes, not ten Minutes at most; when the Blue Flag at the Mizzen-peak was hauled down, and the Signal for the Line again hoisted, and after that the Blue Flag was hoisted under the Signal for the Line: I did not say that before, because I was not asked it; but that was the Case, and that I believe may be found upon my Deposition at a former Court Martial—These Things made such an Impression upon me at that Time, and I have thought of them so often since, that I cannot forget them while I can remember any Thing.

Q. Do you mean to say that the Blue Flag at the Mizzen-peak was hoisted under the Signal for the Line, immediately after the Signal for the Line had been hoisted?

A. I do not know what you mean by immediately—they were not hoisted by the same Halyards, and consequently they were not hoisted together; but it was within a very few Minutes after, I really do not recollect the Number of Minutes; I know the Time nearly that the Signal for the Line was kept down, because that was a material Thing.

Q. Do you know that the *Formidable*, and the Ships of my Division, were the last that came out of the Action?

A. Yes, certainly, the *Formidable* and the greatest Part of them; I believe all, except one, which had got ahead of the *Victory*.

Q. Do you know if that Division suffered more than the other two Divisions, as being last out of Action, and by the Returns made to the Admiral?

A. Yes, I have understood so, but I never knew it till the unhappy Disputes which have occasioned these Courts Martial, nor have I minutely examined it since, but I have understood so.

The Prisoner or Court having no further Questions to ask, the Witness was discharged from further Attendance.

Withdrew.

Honourable Boyle Walsingham, Captain of the Thunderer, sworn.

Q. What Division did you belong to in the Fleet under Command of Admiral Keppel on the 27th July?

A. The Admiral's Division.

Q. Did it appear to you that Sir Hugh Palliser, in the Morning of the 27th July, did all in his Power to bring the *Formidable*, and the Ships of the Blue Division (that were remaining with him), into Action with the Enemy?

A. I paid very little Attention to the *Formidable*, I was so taken up with my own Ship, till I saw her come into Action.

Q. Did you see the *Formidable* during the Action, and did it appear to you that the Vice-Admiral of the Blue behaved as became an Officer of his Rank and Station in the Fleet?

A. I thought the *Formidable* came into Action with great Spirit, by keeping up a constant and a regular Fire.

Q. Did you see the *Formidable* immediately after she came out of Action?

A. No, I did not attend to her, I was so much taken up with my own Ship.

Q. At

Q. At what Time was the Red Division in the Rear on the Starboard Tack, and at what Time did it quit the Rear to go to its Station ahead of the Center?

A. The Red Division passed me a little after Five, they then came from the Rear; at this Distance it is impossible to be very correct in point of Time.

Q. What Situation was the *Thunderer* in with respect to the *Victory* at that Time?

A. Ahead of the *Victory* on the Starboard Tack.

Q. At what Time did the Red Division get into its Station ahead of the Center?

A. I believe in some little Time after they passed me.

Q. What was the Position of the Blue Division at that Time, with respect to the *Victory*?

A. I cannot pretend to say; but with respect to my own Ship, they were to Windward upon the Starboard quarter.

Q. Can you ascertain the Distance?

A. As we stood on, the Distance increased; the Vice-Admiral of the Blue keeping his Wind.

Q. At what Time did you first see the Signal for the Line of Battle, and how long was it flying on board the *Victory*?

A. The Admiral, I think, hoisted the Signal for the Line of Battle about Two o'Clock, after he wore, and stood upon the Larboard Tack towards the Enemy, and I believe there was very little Time intervened; I cannot say positively that there was any, for it was flying at Night.

Q. Was the Signal for the Line of Battle repeated, and by whom?

A. It was repeated by the *Arethusa* Frigate, the Ship I looked to.

Q. Was the Signal repeated by the two Vice-Admirals of the Red and Blue Divisions?

A. To the best of my Recollection, it was repeated by the Vice-Admiral of the Red, but it was not repeated by the Vice-Admiral of the Blue; I am very clear in that, because he drew my Attention.

Q. Were any other general Signals made on board the *Victory* from the Time she was on the Starboard Tack till Dark, and were they repeated, and by whom?

A. The *Victory* hoisted a Blue Flag at the Mizzen-peak, which was up for some Time with the Signal for particular Ships to get into their Stations; the Blue Flag was repeated by the Vice-Admiral of the Blue.

Q. What was the Blue Flag a Signal for?

A. To call Ships to Windward into the Admiral's Wake.

Q. Did the Vice-Admiral of the Blue come into his Station in the Line in consequence of those Signals?

A. No.

Q. Did you see any Impediments to his doing it, and what were they?

A. I saw none.

Q. Did you see the *Formidable's* Foretop sail unbent any Part of that Evening?

A. Yes, for some Hours.

Q. Did the Vice-Admiral of the Blue make any visible Effort to get into his Station in the Line, by making sail or otherwise?

A. None, that I saw.

Q. What Sail had the *Formidable* set?

A. It is so long ago, I cannot recollect.

Q. From the general Position of the Fleet, between Five and Seven o'Clock, had you any Reason to think it was the Admiral's Intention to renew the Attack in the Afternoon?

A. It was my firm Opinion it was his Intention; and, as a Proof I believed it, my Hands were never from their Quarters.

Q. What do you suppose were the Admiral's Reasons for not re-attacking the Enemy?

A. Because he was not supported by the Vice-Admiral of the Blue.

Q. At what Time was the *Thunderer* in a Condition to take her Station in the Line in the Afternoon?

A. At any Time.

Q. Did the Vice-Admiral of the Blue make any Signal of Distress in the Afternoon, or to speak with the Admiral?

A. None, that I saw.

Q. Did you understand, when the Admiral wore to the Southward, with the Signal for the Line flying, that he meant to collect his Ships in a Line of Battle before he engaged the Enemy again?

A. I suppose he did, because the Signal for the Line of Battle was flying.

Q. You have said that the *Formidable's* Foretop sail was unbent for some Hours, did you see another bent on board the *Formidable* before the Close of the Evening of the 27th?

A. I do not recollect I did, I should rather think not.

Q. How long was the Vice-Admiral of the Blue out of Action before the Admiral made the Signal for the Line of Battle?

A. I do not recollect.

Q. Do you know any Thing further, concerning the Conduct and Behaviour of *Sir Hugh Palliser*, during the 27th and 28th July, either before, in, or after the Action, than you have already related, which may be necessary for the Information of the Court?

A. I know of nothing further than not obeying the Admiral's Signals.

Q. Did the *Victory* carry her distinguishing Lights during the Night of the 27th of July?

A. I was ahead of the *Victory*, so I could not see hers, but I saw the Vice-Admiral of the Red's very plain.

Q. Was you in a Situation to see the Vice-Admiral of the Blue's Light?

A. No.

Prisoner asked,

Q. Did you take any Notice of the *Formidable* during the Time she was in Action, and after the *Thunderer* came out of it?

A. It was in consequence of that I said what I did just now, that the *Formidable* shewed great Spirit in coming into Action, and in keeping up a very warm and constant Fire.

Q. Had not I the Favour of a Visit from you within a Day or two after the Action?

A. Yes, I waited on you with Lord *Mulgrave*.

Q. Do you recollect upon that, or any other Occasion, you was pleased to make me many Compliments upon my Behaviour?

A. Yes, in Time of Action.

Court asked,

Q. If you did not see what Sail the *Formidable* had set, how do you know she made no Effort to get into her Station in the Line of Battle?

A. Because the *Formidable* was to Windward of the Admiral, and she never bore up in consequence of the Signal for the Line of Battle.

Court or Prisoner having no further Questions to ask, the Witness was discharged from further Attendance.

Withdrew.

Being past Four o'Clock, the Court adjourned till To-morrow Morning at Nine o'Clock.

S I X T H D A Y.

SATURDAY, the 17th of APRIL, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

Captain Jonathan Faulknor, late Commander of the Victory, sworn.

The Order for the Trial read.

Q. Give an Account to the Court, at Daylight in the Morning of the 27th of July, relative to the Position of the Vice-Admiral of the Blue, and of his Proceedings till he came into Action.

A. The Vice-Admiral of the Blue was between the Chefs Tree and Lee Beam of the *Victory*, with his Mainsail up—I should think between Two and Three Miles to Leeward. Almost all the Ships of his Division, I think, except the *Ocean*, had their Mainsails up. About Six o'Clock, Signals for Six or Seven Ships of the Vice-Admiral of the Blue's Division were made to chace to Windward, which Signals they immediately complied with.—Some Time after, not long, the Vice-Admiral of the Blue himself made sail, and those Ships stretched ahead of course.

Q. Did it appear to you, that Sir Hugh Palliser, in the Morning of the 27th, did all in his Power to bring the *Formidable*, and the Ships of the Blue Division (that were remaining with him), into Action with the Enemy?

A. I have already said that they made sail, which was all they had in their Power to gain the Wind.

Q. Did you see the *Formidable* during the Action, and did it appear to you that the Vice-Admiral of the Blue behaved as became an Officer of his Rank and Station in the Fleet?

A. I did not see the *Formidable* in any Part of the Action—My Attention was taken up with the Ship I had the Honour to command; and the Orders being given by the Admiral to wear immediately, it was my Duty, as Captain of that Ship, to prepare to do it without any Loss of Time.

Q. Did you expect the Van to come into Action at the Time it did, on the 27th July?

A. I did not; I did not conceive, at the Time we tacked, that the Van could have fetched any Part of the *French* Fleet. I must observe, that there were frequent Hazes that Morning, such as to eclipse the View of our own Fleet, therefore I cannot so pointedly speak as if it had been a clear Day, for I lost Sight of them sometimes for a Quarter of an Hour or Twenty Minutes.

Q. To your Knowledge, did the Admiral expect it?

A. I am sure he did not.

Q. Did you see the *Formidable* immediately after she came out of Action; and what was her Position with respect to the *Victory*?

A. I did not see the *Formidable* directly after she came out of Action, but it was not long after we wore that I saw her; we went to the Windward of the *Formidable*. I would add, that we were then on the Larboard Tack, and the *Formidable* on the Starboard Tack.

Q. Were any Signals made by Admiral Keppel on board the *Victory*, after the Rear Division had

passed the Line of the Enemy, and the Firing had ceased?

A. The first Signal was the Signal to wear, I should suppose at a Quarter before Two o'Clock; and as soon as we had wore, the Signal for the Line of Battle ahead, a Cable's Length asunder, was made at near Two o'Clock.

Q. Did it appear to you that the *Formidable* repeated those Signals?

A. I am sure she did not.

Q. How long did the *Victory* continue upon the Larboard Tack?

A. Till a few Minutes after Three.

Q. What was the Position of the *Formidable* at that Time, and did she obey those Signals while the *Victory* was upon the Larboard Tack?

A. The *Formidable* never wore after the *Victory*, while on the Larboard Tack.

Q. Do you think that, in passing the *Victory*, the *Formidable* could see the Signal for the Line?

A. Most undoubtedly.

Q. Was it repeated by the *Arcturion*, the repeating Frigate?

A. It was.

Q. Was the *Formidable* so situated that she could see the Signal on board the *Arcturion*?

A. I should think she might.

Q. What Time did the *Victory* wear from the Larboard to the Starboard Tack, and did she do it by Signal;—if so, was it repeated, and by whom?

A. The *Victory* wore, by Signal, at about Seven Minutes past Three, which was repeated by the repeating Frigate.

Q. Were any other general Signals made while the *Victory* was on the Starboard Tack till Dark, and what were they?

A. The Signal for the Line of Battle was hauled down at about a Quarter before Four, and that Signal was replaced by the Signal to bear down into the Admiral's Wake; I say replaced, because we all know they go to the same Part of the Ship, the Mizzen-peak. The Signal for bearing down was kept flying till near Four o'Clock, when it was hauled down, and the Signal for the Line of Battle ahead a Cable's-length asunder was again hoisted. Between Four and Five the Signal for bearing down was hoisted under the Signal for the Line of Battle. I do not recollect any other general Signals made on board the Admiral that took the whole Fleet in.

Had Leave to refresh his Memory with his Minutes.

Q. How long were those Signals kept flying?

A. Till Dark.

Q. Did the Vice-Admiral of the Blue repeat the Signal for Ships to come into the Admiral's Wake?

A. The *Formidable* repeated the Signal for Ships to bear down into the Admiral's Wake, in its first Instance, at a Quarter before Four, as well as the *Arcturion*.

Q. Was the Signal for the Line repeated by the Vice Admiral of the Blue?

A. It was not, that I saw: It was on board the Repeating Ship immediately repeated.

Q. Do you remember the *Fox* Frigate being called to the Admiral in the Afternoon, and at what Time?

A. The Signal was made for the *Milford* and *Fox* at the same Time, a little before Five, to come within Hail of the Admiral.

Q. What Orders did the *Fox* receive?

A. I did not hear the Orders given.

Q. Did it appear to you that the *Fox* Frigate joined the *Formidable*, and at what Time?

A. Immediately after the *Fox* was spoken to, I observed her to make more Sail. She carried a Prefs of Sails; her Mainfail and Topgallantfails were set, and she kept her Wind on the Larboard Tack. The Time of her speaking to the *Formidable* I know nothing of; I did not observe that Time at all.

Q. At what Time did the *Fox* come within Hail of the *Victory*?

A. I think that neither of those Signals to speak to the Frigates were out more than Fifteen or Twenty Minutes before they were within Hail of the Admiral.

Q. Did the *Fox* fetch up to the *Formidable* without making aboard?

A. I took Notice that it was impossible for the *Fox* to fetch the *Formidable* without making aboard, because I saw the *Formidable* broad open to Windward of her.

Q. When the *Fox* went to the *Formidable*, was the *Victory* close hauled upon a Wind?

A. When the *Victory* first wore at Seven Minutes past Three, as I have described, she did not keep her Wind, but edged away, in order to succour four or five Ships, then in the S. E. of her; the Wind then Westerly, or W. by N.; and I think that, by the Time the *Fox* went away, we were upon a Wind again.

Q. How far do you think the *Formidable* was from the *Victory* at the Time the *Fox* went to the *Formidable*?

A. Between Two and Three Miles.

Q. Did the *Formidable* bear down after the *Fox* was sent to her?

A. No.

Q. What Position was the *Formidable* in from the *Victory* at the Time the *Fox* went to the *Formidable*?

A. I should think she was between Two and Three Points abaft the *Victory's* Weather-beam. I have described she could not fetch her.

Q. Did Vice-Admiral Sir *Hugh Palliser*, by Signal or otherwise, signify to the Commander in Chief his Incapacity to obey the Signals which were made on board the *Victory*?

A. I saw no other Signal made on board the *Formidable* but the Signal I have described for bearing down into the Admiral's Wake.—No Message was received on board the *Victory*.

Q. Did you yourself perceive any Disability in the *Formidable* to obey those Signals?

A. The *Formidable's* Masts and Yards were all in their Places—none shot down—none carried away, that I saw.

Q. What Sail was the *Formidable* under at the Time the *Fox* was sent to her?

A. The *Formidable's* Foretopfail was unbent; and I think her Mainfail, Forefail, Courses, Main and Mizzen Topfail, were set. When she unbent her Foretopfail, she set her Mainfail, to the best of my Recollection.

Q. Do you know whether the Vice-Admiral of the Blue could or could not obey the Signals made on board the *Victory*, and that nothing hindered him?

A. I know the Vice-Admiral of the Blue was in the Wind's Eye of his Station, or thereabouts; and I saw no external Appearance that could prevent his coming down into his Station.

Q. Was not Captain *Marshall* ordered by the Admiral, immediately before the *Victory* wore to the Southward, to come on board; and what Orders did he receive in consequence of it, and from whom?

A. Captain *Marshall* did come on board; but what Orders he received, I am not acquainted with.

Q. When the Admiral was on the Starboard Tack standing to the Southward, what Number of Ships were formed in the Center Division at Six o'Clock?

A. The greatest Part of that Division were in their Places. I am not clear that the *Sandwich* was in her Station then ahead in the Line of Battle; and I think the *Vengeance* was rather farther astern than her proper Station was at that Period; but I have no Reason to think the rest were not.

Q. What was the Position of the Red Division at that Hour?

A. They were ahead of the Admiral, getting, or nearly got, into their Posts?

Q. Was the Enemy at that Hour formed in a regular Line of Battle, and how did their headmost Ship bear from the *Victory*?

A. They were forming—Many of them were formed—How many, I really cannot fix to Six o'Clock, or a Quarter or Half an Hour after; because it is more than one can carry in one's Mind at this Distance of Time. The Point of the Compass that the headmost Ship bore to the *Victory* would alter every Minute, because she went much faster than the *Victory*; therefore I did not set her at Six o'Clock, or at any particular Time. The Position was the Lee-quarter.

Q. What was the Position of the Vice-Admiral of the Blue at that Hour?

A. Abaft the *Victory's* Weather-beam—nearly on or about the same Bearings he had been on before, to the best of my Recollection.

Q. Did the *Formidable* continue to keep close to the Wind after the *Fox* had spoken to her?

A. I never saw the *Formidable* bear down at all, as I have said before; and I have just said, that she seemed to me to preserve the same Situation, Two or Three Points abaft the *Victory's* Weather-beam.

Q. Was the *British* Fleet at any, and at what Time, in the Evening of the 27th, in a Situation to have re-attacked the *French* Fleet, if the Vice-Admiral of the Blue, with his Division, had come down, and formed in the Line?

A. I should think—as far as I can recollect—the Van and Center Divisions were in that Situation, that an Attack might have been renewed a little after Six o'Clock.

Q. Whether the *British* and *French* Fleets were respectively in such Situations, as to have admitted of an Attack, on the Side of the *English* Fleet, so soon as you have mentioned?

A. I shall answer that Question by saying, the *French* Fleet were to Leeward of the *British* Fleet.

Q. What Number of Ships of the Blue Division had the Vice-Admiral of the Blue with him at that Period?

A. I cannot charge my Memory with there being any of his Division absent from him at that Period; I mean any but what were then about him.

Q. Did it appear to you that the Disobedience of the Vice-Admiral of the Blue to the Signals which have been mentioned was the Reason the Attack was not renewed?

A. I know of no other.

Q. Did the Admiral assign any Reason for the Red Division being placed in the Rear; and at what Time did it take place?

G

A. The

A. The Admiral did not assign any Reason to me, as his Captain, why he sent those Ships there; and I think they were not immediately astern of the *Victory*; in her Wake, I mean, at about Five o'Clock, or rather before; at the Time the *Milford* was sent.

Q. At what Hour did the *Formidable* come into her Station in the Evening of the 27th of July?

A. She never came into her Station at all after the Battle on the 27th.

Q. Did the *Victory* carry her distinguishing Lights in the Night of the 27th of July?

A. The *Victory* carried her distinguishing Lights; and I took Care that they should be good ones, as Captain of the Ship, by having all the Lanterns cleaned, with the Addition of a very good Light at the Bow-sprit End.

Q. Did you see distinguishing Lights on board the Vice-Admiral of the Red that Night?

A. I did, more than once.

Q. Did you see any distinguishing Lights on board the *Formidable* in the Night of the 27th of July?

A. I never saw any thing of the *Formidable*, or any Lights she had that Night; after Dark, I mean.

Q. In what Position was the Vice-Admiral of the Blue at Daybreak in the Morning of the 28th July, with respect to the *Victory*?

A. I cannot describe the exact Position of the Vice-Admiral of the Blue at the Break of Day; but I think I can tell the Court where he was, pretty nearly, when we bore away for the three Ships which we saw under the Fleet's Lee.

Q. Give an Account where he then was?

A. To the best of my Recollection the Vice-Admiral of the Red was upon the *Victory*'s Starboard-beam, and the Vice-Admiral of the Blue narrow upon the *Victory*'s Starboard-quarter; to the Southward of the *Victory*, both of them; the Vice-Admiral of the Blue was, I suppose, a League off. We bore away at about Four o'Clock in the Morning.

Q. Had the Vice Admiral of the Blue been in his Station in the Night of the 27th, could you have seen his distinguishing Lights?

A. It would have been impossible for the *Victory* to see them.

Q. Was not the *Victory* a good deal damaged in the Action of the 27th?

A. She received her Share of Damage with the rest of the Fleet.

Q. How long was it before she was again fit for Action?

A. I think by Four o'Clock; when her Main-top-sail was bent.

Q. When the *Victory* wore to the Southward, with the Signal for the Line flying, was it not meant by that Evolution to collect the Ships, and form a regular Line of Battle, before you engaged the Enemy again?

A. Most undoubtedly.

Q. When the *Victory* wore to the Southward, and edged away from the Wind, how long did she continue in that Direction before she hauled upon a Wind again?

A. I have in a former Instance described, I think, that I am not precise as to the exact Time she hauled her Wind; but it was between Five and Six o'Clock, I suppose.

Q. What Sail was the *Victory* under, and did she increase her Distance from the *Formidable*; and if she did, how much, in Consequence of her bearing away to join our Ships to Leeward?

A. The *Victory* was under her Fore-sail and three double-reefed Top-sails; I think, if any thing, we rather increased our Distance from the *Formidable*;

I cannot measure to a Quarter of a Mile, or Half a Mile; but we left the *Formidable* still to Windward.

Q. When the *Victory* hauled her Wind, what was then the Position of the Red Division?

A. The Red Division were getting forward to their Post ahead of the *Victory*; they had a far superior Sail out to what we had.

Q. Did the *Victory* increase or near her Distance from the *Formidable* after the *Victory* hauled her Wind?

A. I think the *Formidable*, in my Eye, was pretty near the same Place.

Q. Whilst the *Victory* was bearing down to near the Ships to Leeward, what was the Position of the *Formidable* then from her?

A. Upon the *Victory*'s Starboard-quarter.

Q. At what Hour were the particular Ships Signals of the Blue Division made to bear down into the *Victory*'s Wake?

A. I think a little before Seven o'Clock.

Q. Were all or any of the Ships of the Blue Division in the Line in the Course of the Evening?

A. I think the *Elizabeth* was down to Leeward, and by the Close of the Day, or a little before, the *Ocean* was down to Leeward; that is, near about the Admiral's Wake. Any other of that Division I did not see down to Leeward near the Admiral's Wake.

Q. When the *Victory* was on the Starboard Tack, with the Signal for the Line of Battle flying, did she carry so much Sail as to prevent the Vice-Admiral of the Blue from getting into his Station?

A. No, I do not think she did.

Q. At what Time in the Evening of the 27th did Admiral Keppel give up his Design of re-attacking the Enemy?

A. I had no Communication at all with the Admiral upon that Subject.

Q. Did Admiral Keppel express his Disappointment at the Vice-Admiral of the Blue's not bearing down; and do you recollect what his Expressions were?

A. He did express great Uneasiness; and more than once asked me what they could be about. My Answer was, that I really could not tell.

Q. Did the *Formidable* make any Signal of Distress, or to speak with the Admiral, in the Evening of the 27th?

A. None; I saw her the whole Time, and she made none.

Prisoner admits he made no such Signal.

Q. What Sail did the *Victory* carry during the Night of the 27th, and at what Rate did she go?

A. The *Victory* carried her treble-reefed Top-sails, Fore-sail, and, I think, her Mizzen and Mizzen-stay-sail, and took her Mizentop-sail in at the Close of the Day; so that the Fleet might see the established Sail for the Night. I beg to observe, that the Mizzen-mast of the *Victory* was then fishing, having been shot through; and I can hardly think her Mizzen was properly set. She sometimes went under two Knots, and sometimes two Knots, the whole Night long. I did not quit the *Victory*'s Deck many Minutes during the whole Night.

Q. Was the Mizzen up in the Evening, while the Signal for the Line was flying?

A. It certainly was not set.

Q. After the Rear of the *English* Fleet came out of Action, did not the Vice-Admiral of the Blue, with some Ships of his Division, wear and lay their Heads towards the Enemy, before the *Victory* wore the first Time?

A. I never saw the Vice-Admiral of the Blue with

with his Head towards the Enemy after he passed them, nor any other Ship of that Division.

Q. What Sail did the *Formidable* appear under, from the Time you passed her on the Starboard Tack till Seven in the Evening?

A. Under her Courses. When I say Courses, I cannot say whether she had her Mizzen out some Time, or all the Time.

Q. As it has appeared that the *French* Fleet, soon after the Action, formed in a regular Line ahead upon the Starboard Tack, and stood towards the *British* Fleet, was it not then in their Power to have renewed the Action, and that very soon, with our Fleet?

A. The *French* Fleet certainly had it in their Power to have re-attacked the *British* Fleet in the Situation they were soon after the Action; because the Van of the *French* lay up for the *Victory*; but I beg to be understood it was when they had wore. When the *French* Fleet first wore, the Van of them could have weathered the *Victory*, if they had chose to do it.

Court had no further Questions to ask the Witnesses.

Prisoner had none to ask.

Withdrew.

George Rogers, Esq; Secretary to Admiral Keppel, sworn.

Q. Did you attend Admiral Keppel to take Notes for him on the 27th of July?

A. I did.

Q. Has it been usual for you to do so?

A. It has always, ever since I have had the Honour to attend the Admiral.

Q. Give an Account of the general Signals which were made on board the *Victory* on the 27th of July.

A. The first Signal I noticed was the Signal for the Fleet to tack all together, at Ten o'Clock in the Morning. At Twenty Minutes past Eleven, the Ships ahead beginning to fire upon the *French* Fleet, the Admiral immediately ordered the Signal for Battle to be made. About a Quarter or Twenty Minutes past One, the Signal was made to wear, but the *Victory* did not wear till a Quarter before Two. The Signal for Battle was hauled down about this Time. At Two o'Clock the Signal was made for the Line of Battle ahead. At Ten Minutes past Three the Signal was made to wear. Very soon after, the Signal was made for Ships to bear down into the Admiral's Wake. A few Minutes after Five, the Signal for all Ships to get into their Stations. At Seven o'Clock, many Pendants were thrown out for the Ships of the Vice-Admiral of the Blue's Division to obey the Signals which were flying. These are all the general Signals.

Q. Was there not a Signal made for the *Fox* to come within Hail of the *Victory* in the Afternoon?

A. There was such a Signal, but I have it not in my Minutes.

Q. Do you remember any Orders that were sent by the *Fox*?

A. Yes; perfectly.

Q. What were they?

A. Captain *Windsor* was directed to go to the Vice-Admiral of the Blue, to desire him to bear away into his Station in the Line, and to acquaint him that the Admiral waited for him to renew the Action.

Q. Did you see the *Fox* range near the *Formidable*?

A. I did; I saw her some Time afterwards on the *Formidable's* Lee-quarter.

Q. At what Time might that be?

A. In about Half an Hour from the Time she left the *Victory*, which was about Five o'Clock.

Q. Did the Vice Admiral of the Blue bear down in consequence of those Orders?

A. No.

Q. How was the Vice-Admiral of the Blue situated at that Time?

A. Upon the *Victory's* Weather-quarter.

Q. Can you judge at what Distance?

A. I would not wish to speak as to Distance.

Q. Did you ever observe the Signal for the Line of Battle ahead to have been repeated on board the *Formidable* during the Afternoon?

A. No; I never did.

Q. Was the Signal for the Line of Battle ahead flying from the Time the *Victory* wore to the Southward till Dark?

A. I should say it was; but I understand it was hauled down for a short Time, but I did not observe it.

Q. Did you see any, and how many Ships of the Vice-Admiral of the Blue's Division whose Pendants were out, bear down in consequence thereof?

A. Some of the Ships did bear down, but I cannot say what Ships they were, or their Number.

Q. Did you see the Signals which you have mentioned, repeated by the *Arcturion*, the repeating Frigate?

A. Yes; Nobody could be more punctual in that Particular than Captain *Marshall*.

Q. Were they repeated on board the *Formidable*?

A. The only Signal I saw repeated on board the *Formidable* was the blue Flag at the Mizzen Peak, and some Pendants thrown out.

Q. Did you see the *Formidable* during the Action?

A. I did not observe her; I was fully intent on the Ships the *Victory* was opposed to.

Q. Did you take notice of the *Formidable* after the *Victory* came out of Action?

A. I cannot say I did, enough to give a particular Account of her, if it is meant immediately after she came out of Action.

Q. Was you in the *Victory* in such a Situation as to see the Signal for the Line of Battle, had it been flying on board the *Formidable*?

A. Yes, certainly, as I looked to her with great Attention.

Q. Was any other Order or Message but what you have mentioned sent to any other Part of the Fleet, on the Day of the Action?

A. Yes, there were others.

Q. What were they?

A. A little before Three o'Clock, Captain *Sutton* of the *Proserpine* was called on board, in order to be sent to the Vice-Admiral of the Red, to direct him, as he had the Position to Windward, to lead on the Larboard Tack; but before Captain *Sutton* left the *Victory*, he had wore to the Southward; he was then directed to order Sir *Robert Harland* to keep his then Position astern. At Three Quarters past Four the *Milford* was sent to order Sir *Robert Harland* to lead ahead. I do not recollect any other Messages that Day.

Q. How long was it after that, Sir *Robert Harland* did pass the *Victory*?

A. I cannot say exactly; Sir *Robert* obeyed the Orders as soon as the Ship got to him, which might be Half an Hour, or a little more, but I cannot be precise as to Time.

Q. Did

Q. Did you hear Admiral Keppel express his Displeasure at the Ships not bearing down, agreeable to the Signal flying for Ships to Windward to come into the Admiral's Wake?

A. The Admiral expressed great Anxiety and Disappointment at the Vice-Admiral of the Blue's not coming down in consequence of the Signals.

Q. Did you hear the Admiral say, that if he could have formed his Line, he would have renewed the Action?

A. I cannot say he made use of those express Words, but there was no Doubt in any Body on board the *Victory* but that was his Intention.

Q. Did he by any other Expressions signify that?

A. By many, but I cannot call to Memory the very Words.

The Court nor Prisoner having any further Questions to ask the Witness, he was discharged from his Attendance.

Withdrew.

Samuel Marshall, late Captain of the *Arethusa*, sworn.

Q. Were you appointed to repeat the Signals made on board the *Victory*, on the 27th and 28th of July?

A. I was.

Q. Give a general Account of all Signals made on the 27th of July, distinguishing the Times when hoisted, Places where hoisted, Significations of the Signals, and the Times when hauled down?

Has Leave to look at his Minutes.

A. The first Signal was Thirty Minutes past Ten, A. M. Unions, Fore and Mizentopmast-heads, one Gun, for the whole Fleet to tack together; hauled down Forty-two Minutes past Ten. Five Minutes past Eleven, A. M. red Flag, Foretopmast-head, One Gun, for the Fleet to engage; hauled down Twenty-six Minutes past One. Two Minutes past One, P. M. blue Pendant, Ensign-staff, for the Fleet to wear; hauled down Ten Minutes past One. Forty Minutes past One, Flags Union and blue, with a red Cross, Mizzen-peak, Union upwards, for the Fleet to form a Line ahead, one Cable's Length asunder; hauled down Twenty-three Minutes past Three. Fifty Minutes past One, Flags striped blue and white, Mizentopmast-head, for a particular Ship to come within Hail; hauled down at Two. The *Proserpine* and *Arethusa*'s Signals were thrown out at that Time. Fifty Mi-

minutes past Two, blue Pendant, Ensign-staff, for the Fleet to wear; hauled down at Three. At Three, yellow Pendant, Maintopmast-head, the *Proserpine*'s Signal; hauled down Fifteen Minutes past Three. Twenty-four Minutes past Three, blue Flag, Mizzen-peak, for Ships to Windward to get into the Admiral's Wake; hauled down at Thirty Minutes past Three. Thirty Minutes past Three, Union Flag and blue, with a red Cross, Mizzen-peak, for the Fleet to form a Line ahead, a Cable's Length asunder; hauled down at Day-light next Morning. Fifty Minutes past Three, a yellow Pendant at the Mizentopmast-head, the *Milford*'s Signal; hauled down Thirty-three Minutes past Four. The next is a white Pendant, the *Duke*'s Signal, not noted when hoisted, but it was hoisted before a striped blue and white Flag at the Maintopmast-head, for a particular Ship to make more Sail; the Flag was hauled down Thirty-four Minutes past Four, and the Pendant at Thirty-two Minutes past Five. At Thirty-seven Minutes past Four, a *Spanish* Flag at the Maintopmast-head, observing Ships out of their Stations; not hauled down till Dark. Fifty-six Minutes past Four, red Pendant at the Mizentopmast-head, the *Prince George*'s Signal, hauled down at Two Minutes past Five. Fifty-seven Minutes past Four, blue Pendant, Starboard Mizentopmast Yard-arm, the *Bienfaisant*'s Signal; it is not noted when that was hauled in, but it flew a good while: There were other Signals at that Time, but they are not noted. At Twenty-two Minutes past Five, yellow Pendant, Maintopmast-head, the *Proserpine*'s Signal; hauled in Two Minutes past Six. Thirty-two Minutes past Five, yellow Pendant, Starboard Maintopmast Yard-arm, the *Fox*'s Signal; it is not noted when that was hauled in. At Ten Minutes past Six, a blue Flag at the Ensign-staff, hoisted there by Mistake; hauled down at Thirteen Minutes past Six, and a blue Flag at the same Minute hoisted at the Mizzen Peak, under the Signal for the Line for Ships to Windward to get into the Admiral's Wake, flew till Day-dawn next Morning. At Thirty-six Minutes past Six, a red Pendant, Larboard Maintopmast Yard-arm, the *Elizabeth*'s Signal; same Time, a blue Pendant, Larboard Maintopmast Yard-arm, the *Terrible*'s Signal; same Time, a blue Pendant, Larboard Fore Yard-arm, the *Centaure*'s Signal; same Time, a white Pendant, Larboard Mizentopmast Yard-arm, the *America*'s Signal. At the same Time there were either Four or Five blue Pendants flying on board the Admiral, but I had only Two to repeat them with.

Adjourned, being Half past Three, till Monday Morning at Nine o'Clock.

S E V E N T H D A Y.

MONDAY, the 19th of APRIL, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

Captain Marshall called in again.

Q. Were all the Signals you have given an Account of, repeated on board the *Arethusa*?

A. They were, but I cannot ascertain the exact Time; I had no Watch.

Q. Did you see the *Formidable* immediately after she came out of Action, and what was her Position, as you conceived, with respect to the *Victory*?

A. She was astern, and rather upon the Weather Quarter, if I recollect.

Q. Did you see her at any Time after the Action on the Larboard Tack, with her Head to the Enemy?

A. I did.

Q. How long?

A. I

A. I cannot ascertain the Time, I tacked upon the *Formidable's* Weather-quarter.

Q. Did the *Formidable* bear down into the Line in consequence of the Signal made at Forty Minutes past One, which you say was not hauled down till Twenty-three Minutes past Three?

A. You will observe that the Fleet wore in that Time; the *Formidable* was to Leeward of the *Victory* when I tacked on the Weather-quarter.

Q. Did you see the *Formidable* wear from the Larboard to the Starboard Tack?

A. I did not.

Q. Did you see her repeat that Signal?

A. No, I did not.

Q. How long do you imagine the *Formidable* was upon the Larboard Tack?

A. I cannot tell how long she was upon that Tack. I can tell, nearly, at what Time I tacked upon the Weather-quarter. The striped blue and white Flag at the Mizentopmast-head was made at Fifty Minutes past One; and I think that Signal was thrown out just as we trimmed our Sails, and we looked up for the *Victory*; that was my Signal to come within Hail, and then I never looked aft again to see any Thing of the *Formidable*. The *Victory* was upon the Larboard Tack at that Time, and I fetched just under the *Victory's* Lee-bow; and while I was in Stays I was hailed from the *Victory* to come on board, which I immediately obeyed.

Q. What Distance do you think the *Formidable* was from the *Victory*, whilst they were both on the Larboard Tack?

A. It is so long ago I cannot pretend to ascertain Distance.—I should suppose not a Mile.

Q. In what Position was the *Formidable* at the Time the Signal, Twenty-four Minutes past Three, was made for Ships to get into the Admiral's Wake?

A. I cannot charge my Memory with it.

Q. Did the *Formidable* bear down in consequence of that Signal?

A. I have said I cannot charge my Memory where she was at that particular Period.

Q. When you was on board the *Victory*, what Orders did you receive?

A. No particular Orders, I met Captain Sutton going from the *Victory*.

Q. What was the Position of the *Formidable* at the Time the Signal was made to form a Line ahead a Cable's Length asunder?

A. She must have been on the Lee-bow of the *Victory*.

Q. Did you see whether she obeyed that Signal?

A. I did not.

Q. Was she in a Position that she could see the Signal?

A. I should suppose so, either from the Admiral or the repeating Frigate, as I was so wide of the Admiral.

Q. Did you see whether she repeated that Signal?

A. I did not.

Q. Did you see the *Fox* join the *Victory* in consequence of the Signal that was made for that Ship, and at what Time, as near as you can recollect?

A. The *Fox* instantly obeyed her Signal; it appears to have been repeated at Thirty-two Minutes past Five.

Q. What Distance do you imagine the *Fox* was from the *Victory* when the Signal was thrown out?

A. She was near the *Arctusa*, who was near three Miles; a little before the Admiral's Weather-beam.

Q. Are we to understand that the *Fox* was Three Miles from the *Victory*?

A. I endeavoured to keep at the Distance of Three Miles always from the *Victory*, and the *Fox* was near me.

Q. Did you observe the Time when the *Fox* closed with the Admiral's Stern, so as to be within Hail?

A. No, I did not.

Q. Did you afterwards see the *Fox* join the *Formidable*, and at what Time, as near as you can recollect?

A. I did not.

Q. Did the *Formidable* bear down to the Admiral, after the *Fox* was sent to her?

A. I did not observe the *Formidable* bear down.

Q. In what Position were the Vice-Admiral of the Blue, and the Ships of his Division, at Thirteen Minutes past Six, when the Signal was made for Ships to Windward to bear down into the Admiral's Wake?

A. The *Formidable* appeared to me, nearly, at that Time, to be about Two, or Two Points and a Half on the *Arctusa's* Lee-quarter; there were two Ships nearly in the *Arctusa's* Wake. I cannot ascertain the Distance.

Q. Was the *Arctusa* then upon a Wind?

A. Yes, our Sails were trimmed to the Wind, but we chiefly attended to keep in our Station.

Q. Did the Vice-Admiral of the Blue repeat the Signal, at Thirteen Minutes past Six, for Ships to Windward to bear down into the Admiral's Wake?

A. If I am not mistaken, he did repeat it—I think he did.

Q. Did he in the *Formidable*, with the Ships of his Division, obey that Signal?

A. I have observed before that I did not see the Vice-Admiral of the Blue bear down—I did not attend to the other Ships of the Division.

Q. Did the *Formidable* keep close to the Wind, or did she appear to be edging down?

A. She did not appear to me to edge down; but I do not know that she was keeping close to the Wind.

Q. Did you see any Disability in the *Formidable* that prevented the Vice-Admiral of the Blue's obeying any of the Signals which have been mentioned, or any Thing else that hindered his Compliance therewith?

A. I recollect the *Formidable's* Foretop-sail was unbent, but I do not remember any Thing more—I paid very little Attention to any Thing else but the *Victory*.

Q. Did you see Sir Robert Harland pass from his Position astern, in order to lead ahead of the *Victory*, and at what Time was it?

A. I do not know the Hour—That Division appeared to pass between the *Victory* and me.

Q. Do you recollect that it was before or after the last Signal which has been mentioned?

A. I do not.

Q. What Number of Ships were formed in the Center Division at Six o'Clock, when the Admiral was on the Starboard Tack, standing to the Southward?

A. I have observed before, that I paid very little Attention to any Thing but the *Victory*, therefore I cannot say. I did not think it a Part of my Duty, otherwise I would have been more particular; and I am equally unable to say more than I have already said, as to what was the Position of the other Divisions at that Time.

Q. Do you know what was the Position of the French Fleet at Six o'Clock, relative to the English Fleet?

H

A. They

A. They were ranging up on the Larboard Quarter of the *English Fleet*, as I recollect, Four, Five, or Six Sail of them. I cannot place them to say they were ahead or abreast of any particular Ship.

Q. At what Hour did it appear to you the *Formidable* got into her Station in the Evening?

A. I have before said I did not observe her to bear down.

Q. At what Hour did you observe the Van Division to be in their Station in the Line?

A. I have before observed, that I cannot place the Divisions of the Fleet.

Q. What Time did you first see the *Formidable* on the Starboard Tack, standing to the Southward?

A. While I was on board the *Victory* I saw her passing.

Q. Do you know that she wore to the Southward before the Signal was made for that Purpose on board the *Victory*?

A. I know not when she wore.

Q. How soon after the *Formidable* passed to Leeward of the *Victory*, did the *Victory* wear?

A. I left the *Victory* while she was wearing from the Larboard to the Starboard Tack—I cannot say how far the *Formidable* had got past—The *Formidable* passed the *Victory* with her Starboard Tack on board, and the *Victory* was on her Larboard Tack. The Signal was made on board the *Victory* to wear, and I left the *Victory* while she was wearing.

Q. Had the *Formidable* passed any considerable Time before?

A. I should think not.

Q. How long do you suppose you was on board the *Victory*?

A. Near an Hour, I should suppose.

Q. Was there any Conversation passed between the Admirals Keppel and Campbell and you relative to the Fleet during that Time, that you recollect?

A. There were many Observations made; but I do not recollect any thing particular.

Q. Did you see distinguishing Lights on board the *Victory* in the Night of the 27th?

A. Most assuredly I did.

Q. Did you see distinguishing Lights on board the Vice-Admiral of the Red that Night?

A. I did.

Q. Did you see distinguishing Lights on board the *Formidable* that Night?

A. I did not.

Q. Was your Situation such, that you could have seen those Lights, if there had been any?

A. I lay best Part of the Night upon the Vice-Admiral of the Red's Weather-quarter; so that I did not see them.

Q. Did you see the Vice-Admiral of the Blue at Day-break in the Morning of the 28th, and what was his Position with respect to the *Victory*?

A. I did not observe the Vice-Admiral of the Blue at Day-break.

Q. When you did see him, what then was his Position?

A. I do not recollect when or where I saw him.

Prisoner's Questions:

Q. Do you recollect, when you observed the *Formidable*, whether she appeared to you to be disabled in her Sails and Rigging?

A. Her Sails were shattered, as some other Ships were. I cannot say to Rigging, at the Distance I was from her.

Q. Did the *Formidable* wear to stand from the Enemy towards the *Victory* about the Time you was passing in your Boat to the *Victory*?

A. I know not when she wore; it might be while I was standing to the *Victory*; it might be while I was in my Boat; or it might be while I was first on board the *Victory*.

Q. After you went on board the *Victory*, did the *Arctusa* stay by the *Victory*?

A. Yes; I believe she did.

Q. Then did not the *Victory* and *Arctusa* stand directly towards the *Formidable*, from the Time you tacked under the *Victory*'s Lee-bow, till the *Victory* and *Formidable* passed each other?

A. I know nothing of the *Formidable* till seeing her pass the *Victory*'s Starboard-beam; therefore I cannot know that the *Victory* and *Arctusa* were standing for her.

Q. After the blue Flag at the Mizzen-peak was hauled down, as appears by your Minutes at Thirty Minutes past Three, was it ever hoisted again till Thirteen Minutes past Six o'Clock?

A. I believe not.

The Prisoner desired Captain Marshall to declare, whether the Paper of Signals kept by the Mate of the Arctusa, and which he (Captain Marshall) delivered to the President of the Court upon Admiral Keppel's Trial, is the same as the Paper of Signals now upon the Table.

The Paper called for, annexed to the Proceedings of the late Court-martial, was shown to the Captain.

A. Yes, I dare say it is; but there are some Improperities in it.

The Paper of Signals was compared with the Account given by Captain Marshall, and with a Paper of Signals kept by Mr. Aaron Graham, Purser of the Arctusa.

The latter was ordered to remain in Court, and the following is a Copy of it.

SIGNALS

SIGNALS made on board his Majesty's Ship *Victory*, and repeated by his Majesty's Ship *Arcturion*, on the 27th of July, 1778.

When made		Sort of Signal.		Where hoisted.	Guns.	Signification.	When hauled down.		Page.	Article.	Instructions.
A. M.	H. M.	Flag or Pendant.	Colour.				H. M.	A. M. or P. M.			
A. M.	10 30	Flags	Unions	Fore and Mizentopmast-heads	1	For the Fleet to tack	10 42	A. M.	4	7	General Sailing.
P. M.	11 5	Flag	Red	Foretopmast-head	1	For the Fleet to engage	1 26	P. M.	23	13	General Fighting.
	1 2	Pendant	Blue	Ensign-staff	1	For the Fleet to wear	1 10		4	8	General Sailing.
	1 40	Flags	Union and Blue with Red Cross	Mizen-peak; Union upwards	1	For the Fleet to form a Line ahead, one Cable's Length astunder	3 23		18	1	Admiral Keppel's Fighting.
	1 50	Flag	Striped, Blue, and White	Mizentopmast-head		For the Proterpine to come within Hail	2		4	6	Admiral Keppel's Day-signals.
	2 50	Pendant	Yellow	Maintopmast-head	1	For the Fleet to wear	3 15		4		General Sailing.
	3 24	Pendant	Blue	Ensign-staff	1	The Proterpine's Signal	3 30		22	6	General Fighting.
	3 30	Flags	Union and Blue with Red Cross	Mizen-peak; Union upwards	1	For Ships to Windward to get into the Admiral's Wake			18	1	Admiral Keppel's Fighting.
	3 50	Pendant	Yellow	Mizen-peak		For the Fleet to form a Line ahead, one Cable's Length astunder	4 33				
	4 33	Pendant	White	Mizentopmast-head		The Duke's Signal	5 32				
	4 37	Flag	Striped, Blue, and White	Starboard Maintopmast-head		For a particular Ship to make more Sail	4 34		4	5	Admiral Keppel's Fighting.
	4 56	Pendant	Spanish	Maintopmast-head		Observing Ships out of their Stations			4	4	Admiral Keppel's Sailing.
	4 57	Pendant	Red	Mizentopmast-head		The Prince George's Signal	5 2				
	5 22	Pendant	Blue	Starboard Mizentopmast-head		The Bienfait's Signal	6 2				
	5 32	Pendant	Yellow	Maintopmast-head		The Proterpine's Signal	6 13				
	6 10	Flag	Blue	Starboard Maintopmast-head		The Fox's Signal			22	6	General Fighting.
	6 13	Flag	Blue	Ensign-staff		Hoisted there by Mistake					
	6 36	Pendant	Red	Mizen-peak. Under the Signal for the Line		For Ships to Windward to get into the Admiral's Wake					
		Pendant	Blue	Larboard Maintopmast-head		The Elizabeth's Signal					
		Pendant	Blue	Larboard Maintopmast-head		The Terrible's Signal					
		Pendant	Blue	Larboard Fore Yard-arm		The Centaur's Signal					
		Pendant	White	Larboard Mizentopmast-head		The America's Signal					

Q. Do you think the *Formidable* was in such a Position on the Evening of the 27th, as to have enabled her to see any Signals that were made, either from the Repeating Ship, or the *Victory*?

Admitted by the Prisoner that she was.

Q. Did you see the *Formidable* during the Action of the 27th?

A. No, I did not.

Withdrew.

Aaron Graham, late Purser of the *Arethusa*, sworn.

Q. Where was you stationed on board the *Arethusa* on the 27th of July, and what was your Duty during the Time of Action?

A. On the Quarter deck, to minute Signals.

Q. What is that Paper in your Hand?

A. It is the Minutes.

Q. Is it an Account of Signals taken that Day that you can swear to?

A. It is a correct Copy of a Copy of the original Minutes which I took on the 27th of July.

Q. Give an Account of the Signals you took Notice of on that Day, their Significations, when hoisted, and when hauled down.

A. The first Signal I saw was at Thirty Minutes past Ten; Union Flags at the Fore and Mizzen Topmast Head, for the Fleet to tack together—Hauled down soon after tacking.—The second was at Five Minutes past Eleven; Red Flag at the Foretopmast-head, Signal to engage—Hauled down at Twenty-six Minutes past One.—At Two Minutes past One, a blue Pendant at the Ensign-staff, for the Fleet to wear—Hauled down soon after wearing.—At Forty Minutes past One, Union Flag, and a blue Flag with a red Cross at the Mizzen-peak, Signal for the Line of Battle ahead—Hauled down at Twenty-three Minutes past Three.—At Fifty Minutes past One, a blue and white striped Flag at the Mizentopmast-head, I believe a Signal for Ships to come within Hail—There was then a yellow Pendant at the Foretopmast-head, and another at the Maintopmast-head, for different Ships—I do not know when the white striped Flag was hauled down.—The next, at Thirty Minutes past Two, a blue Pendant at the Ensign-staff, a Signal for wearing—Hauled down at Three o'Clock—After that, there was a yellow Pendant at the Maintopmast-head.—At Twenty-four Minutes after Three, a blue Flag at the Mizzen-peak, for Ships to Windward to bear down into the Admiral's Wake—Hauled down at Thirty Minutes past Three.—As it was flying on board the *Victory*, equal with the Union, Captain *Marshall* would not have it hoisted till the Signal for the Line was hauled down, to shew it plainer; but it had been up on board the *Victory* from Fifty-six Minutes past Two, or thereabouts.—At Thirty Minutes past Three, Union and blue Flag with a red Cross at the Mizzen-peak, the Signal for the Line, hoisted again—it was not hauled down till the next Morning—A yellow Pendant was hoisted after that; but I do not know where, or at what Time, as the Writing on the Slate I took it from was rather obliterated.—At Thirty-three Minutes past Four, a blue and white striped Flag at the Maintopmast-head—Hauled down at Thirty four Minutes past Four.—At Thirty-seven Minutes past Four, a Spanish Flag at the Maintopmast-head—Hauled down, I believe, after Dark—There were some Pendants flying during the Time the Spanish Flag was flying at the Maintopmast-head—a red Pendant at the Mizentopmast-head—a blue Pen-

dant at the Starboard Mizentopmast Yard-arm—a yellow Pendant at the Starboard Mizentopmast Yard-arm.—At Ten Minutes past Six, a blue Flag at the Ensign-staff—Hauled down Three Minutes afterwards—That was by Mistake on board the *Arethusa*; it was a Signal for Ships to Windward to bear down into the Admiral's Wake on board the *Victory*; but being hoisted under the Signal for the Line, and the Wind blowing fresh, it appeared to us at first on board the *Arethusa* to have been hoisted at the Ensign-staff; but we soon perceived our Mistake, hauled it down immediately, and at Thirteen Minutes past Six hoisted the blue Flag at the Mizzen-peak, under the Signal for the Line, for Ships to Windward to bear down into the Admiral's Wake.

Q. Did you see the general Signals, which have been mentioned, repeated by the Vice-Admirals of the Red and Blue Divisions?

A. I did not, as I looked to no other Ship but the *Victory* for Signals.

Q. Are those Signals in the Paper in your Hand, which is a Copy from a Copy, all of your own Hand-writing?

A. Yes, all.

Prisoner's Questions:

Q. Is that Copy a full Copy of the Original? Or if it is deficient in any Parts, inform the Court of what Parts it is deficient in, and the Reasons of that Deficiency.

A. I have already said, I have no Times annexed to the Pendants which were let fly. When I took the Copy from the original Minutes, I took it for my private Satisfaction, not for public Inspection; and imagined, if I could give a particular Account to my Friends of the general Signals which were made, the Circumstance of particular Ships Signals would be a Matter of no Consequence to them. But I should observe also, that the Reason of my wishing for a private Copy, was because I had made a general Book, which was kept constantly in the Binnacle upon the Quarter-deck; and if any public References were to be made, they would be to that Book.

Witness discharged from further Attendance.

Withdrew.

Honourable Captain Thomas Windfor sworn.

Q. Did you receive any Orders from Admiral Keppel in the Evening of the 27th of July?

A. Yes, I did.

Q. At what Time?

A. Nearly about Five o'Clock.

Q. What were those Orders?

A. The Orders were, to stand to the *Formidable*, with Directions from Admiral Keppel to Sir Hugh Palliser to acquaint him, that he only waited for him and his Division coming down into his Wake to renew the Action.

Q. Did you commit those Orders into Writing?

A. No, I did not.

Q. From whom did you receive them?

A. I received them from Admiral Keppel himself.

Q. Did you go on board to receive them, or was it by Hailing?

A. The Orders I received were by Hail.

Q. At what Time did you deliver the Message on board the *Formidable*?

A. Nearly about Half an Hour after Five.

Q. Did you receive any Answer?

A. Yes; the Answer I received was from Sir Hugh Palliser, that he understood me very well.

Q. Was

Q. Was the *Fox* to Windward or to Leeward at the Time you delivered the Message?

A. To Leeward of the *Formidable*.

Q. What Distance were you from the *Formidable* when you delivered the Message?

A. So close as to have our Sails becalmed by the *Formidable*.

Q. Was there any Noise at the Time that Message was delivered by you to the *Formidable*, or at the Time of receiving the Answer, that could prevent the same being distinctly heard?

A. Noise on board the *Fox*.

Q. Did you hear any on board the *Formidable* at the Time?

A. After I delivered the Message, the *Formidable's* Company cheered the *Fox*, which, when I had got to a sufficient Distance, I made our People return.

Q. Was the Answer received before you heard the Cheering from the *Formidable*?

A. Yes, it was.

Q. Was the Cheering so immediately after the Delivery of the Message, that some Part of the Answer might not have been distinctly heard?

A. Certainly not.

Q. Did you keep close on a Wind when standing towards the *Formidable* from the *Victory*?

A. The *Fox* was close-hauled upon the Larboard Tack.

Q. Did you fetch within Hail of her, or how near?

A. I could not fetch her upon the Larboard Tack. I cannot say exactly how near; but not within Hail, by a good Deal. I fetched her upon the Starboard Tack.

Q. Did you heave the Log while standing towards the *Formidable*, and at what Rate might you go?

A. I did not heave the Log: I should suppose we went about Seven Knots.

Q. How far did you stand beyond the *Formidable* upon the Larboard Tack before you tacked?

A. I cannot say exactly; but a sufficient Distance, till I judged I could fetch her.

Q. What Sail was the *Formidable* under at the Time you delivered the Message?

A. As well as I can remember, she was under her Courses, her Foretopfail being unbent. She had Hands in her Tops. I do not recollect any thing about her other Sails.

Q. Were you called to the *Victory* by Signal?

A. Yes, I was.

Q. How far was you from the *Victory* when your Signal was made?

A. I was upon her Weather-beam, about Three-fourths of a Mile.

Q. Did you observe any Disability in the *Formidable* to make more Sail at that Time?

A. I have already said, her Foretopfail was unbent. I do not recollect any other Circumstance in respect to her Inability.

Q. How long might you be within Hail of the *Formidable*?

A. From my Sails being becalmed, I should suppose between Two and Three Minutes.

Q. How did the *Formidable* bear from the *Fox* at the Time you first saw your Signal to bear down under the *Victory's* Stern?

A. I did not set her by Compass; but, to the best of my Recollection, she was well upon the Weather-quarter of the *Fox*, and at some Distance, which I cannot ascertain.

Q. After you had received an Answer from the Vice-Admiral of the Blue to your Message, did

you see any Signals made on board the *Formidable*; and if so, what were they?

A. I saw several Pendants thrown out, but do not know what they were for.

Q. How soon were those Pendants thrown out after delivering your Message?

A. Almost immediately.

Q. When you was speaking to the *Formidable*, was the Signal for the Line of Battle flying on board her?

A. I have already said, I do not know what Signals she had thrown out.

Q. Did the *Formidable*, after you delivered the Message, keep close to a Wind, or edge away?

A. I did not perceive any Alteration in her Situation after I delivered the Message.

Q. Do you know of the *Formidable's* being in the *Victory's* Wake any Time in the Evening of the 27th July?

A. Not that I saw.

Q. Were there any Message or Words passed between the *Formidable* and the *Fox*, other than what you have related?

A. None, but what I have already related.

Q. Was you long enough under the *Formidable's* Lee for the Vice-Admiral to have signified his Inability to come down?

A. I was there between Two and Three Minutes.

Q. From what Part of the *Formidable* was the Answer given to your Message?

A. I received the Answer from Sir Hugh Pollard, from the Lower-Deck Gallery.

Q. What Sail had the *Victory* set when you received your Message?

A. I do not exactly recollect, but I think she had her double-reefed Topails and Forefail.

Q. Was she going from the Wind, or by the Wind, at that Time?

A. As near as I could judge, she was close-hauled.

Q. What became of the *Fox*, after you had delivered your Message; and did you attempt to return to the *Victory*?

A. Having no Orders to carry to the Admiral, I did not go down to the *Victory*, but ran ahead into my Station, and then reefed my Topails.

Q. How long was the *Fox* in going from the *Formidable* into her Station?

A. As near as I can recollect, between Twenty-five and Thirty Minutes, to the Station I went from.

Q. When you quitted the *Formidable*, how was the Vice-Admiral of the Red's Division situated with regard to the Fleet?

A. As well as I can recollect, they were ahead of the Admiral, at some Distance.

Q. Did you see distinguishing Lights on board the *Victory* in the Night of the 27th?

A. At Times I did.

Q. Did you see distinguishing Lights on board the *Queen* that Night?

A. Yes, I did.

Q. Did you see distinguishing Lights on board the *Formidable* that Night?

A. No.

Q. Did you see the *Formidable* at Day-break in the Morning of the 28th?

A. Not in any particular Situation; I might see her Flag, but do not remember the Position she was in.

Q. In going from the *Formidable* to your Station, what Course did you steer; did you go from the Wind or close-hauled?

A. I am pretty certain I was close-hauled.

I

Q. Was

Q. Was any Person in the Stern-gallery with Sir Hugh Palliser when you delivered your Message?

A. Not that I recollect.

Q. Was the Weather so quiet and still that you think your Message could have been distinctly heard?

A. My Message was certainly heard, or I could not have received so distinct an Answer.

Prisoner's Questions.

Q. Inform the Court, when you received your Message from the *Victory*, whether the *Fox* was upon her Weather or Lee-quarter, or where?

A. The *Fox* was upon the Lee-quarter, close to her.

Q. How many Ships were then formed astern of the *Victory*?

A. I do not remember.

Q. Do you remember if there were any?

A. Certainly there were some.

Q. Can you name the Ship that was next to the *Victory*?

A. No, I cannot.

Q. When you left the *Victory* to go to the *Formidable*, did you wear or tack?

A. I wore.

Q. Did you weather all or any of the Ships next astern of the *Victory*, and how many?

A. I could not weather any one of them.

Q. Then did you pass to Leeward, and astern of them all before you hauled your Wind close?

A. I have already said the *Fox* was nearly close-hauled upon a Wind on the Larboard Tack, I was obliged to pass to Leeward astern of them all.

Q. When you spoke to the *Formidable*, did you not observe a Number of Men employed about the Rigging in the Fore-shrouds, Main-shrouds, and Mizzen-shrouds, which might have an Appearance to you of manning Ship, which has occasioned a Confusion about cheering?

A. There certainly were Men in your Shrouds fore and aft, but that certainly could not hinder my hearing, as the Answer I received from you was before I perceived those Men.

Q. Do you remember observing Men in her Tops, and about her Top-sail-yards at that Time?

A. There certainly were Men in her Tops, and, I believe, about her Foretop-sail-yard, as near as I can recollect.

Withdrew.

Lieutenant Albemarle Bertie sworn.

Q. Do you recollect the *Fox* being called to the *Victory* in the Afternoon of the 27th July?

A. Yes, I do.

Q. Do you recollect the Message that was given to Captain *Windsor* from the *Victory*, for the Vice-Admiral of the Blue?

A. Admiral *Keppel* ordered us to go to Sir Hugh *Palliser*, and to acquaint him he only waited for him and his Division coming down into the Admiral's Wake to renew the Action.

Q. At what Time were those Orders given?

A. I did not minute the Time, I took it to be between Five and Six.

Q. Was the Message delivered to the Vice-Admiral of the Blue, and at what Time?

A. I think we were about Half an Hour from the receiving to the Delivery of the Message; Captain *Windsor* delivered it twice; punctually, and then ordered me to repeat it, which I did as

punctually—We were answered each of us from the *Formidable's* Stern-gallery, "Sir, I understand you perfectly."

Q. Was the *Fox* to Windward or to Leeward at the Time you delivered the Message?

A. On the *Formidable's* Lee-quarter.

Q. What Distance were you from the *Formidable* when the Message was delivered by Captain *Windsor* to her?

A. So near that our Words could not be misunderstood; and at the Time the Message was delivered, upon the Oath I have taken, I believe that there was so perfect a Silence on board the *Fox*, that a Pin might be heard to drop.

Q. Was there any Noise on board the *Formidable*, that might prevent their hearing it?

A. I think there was a Noise on board the *Formidable*, a considerable one; but the Answer we received assured us that the Message we delivered was heard.

Q. Was there any Cheering between the two Ships?

A. There was.

Q. Was the Answer received before you heard the Cheering from the *Fox*?

A. It was, to the best of my Recollection.

Q. Do you know who delivered the Answer from the *Formidable's* Stern-gallery?

A. I never had seen Sir Hugh *Palliser* before, but I was told by some of the Officers that it was him.

Q. Did you keep close upon a Wind when standing towards the *Formidable* from the *Victory*?

A. Yes.

Q. Did you fetch within Hail of her, or how near?

A. Not within Hail of her, I cannot say how near.

Q. How long were you in passing from the *Victory* to the *Formidable*?

A. I have already said, I believe, about Half an Hour.

Q. What Sail was the *Formidable* under at the Time you delivered the Message?

A. I do not recollect.

Q. Did you perceive the Vice Admiral of the Blue make any Alteration of Sail after you had delivered the Message?

A. After we had delivered the Message we ran ahead and shortened Sail ourselves, we had a Press of Sail out, which entirely took up my Attention.

Q. How long did the *Fox* remain within Hail of the *Formidable*?

A. I cannot exactly say; perhaps Five Minutes.

Q. What Situation did the *Formidable* appear to you to be in with respect to her Rigging and Sails, at the Time the Message was delivered?

A. She seemed to be repairing her Damages certainly; there were Hands in her Tops and upon her Top-sail-yards, and every Body seemed to be employed in repairing and refitting the Ship.

Q. How far was the *Fox* from the *Victory*, upon her Signal being made?

A. I believe a Mile or Two on the Weather-quarter, but this I do not speak with Certainty.

Q. How did the *Formidable* bear from the *Fox* at the Time you first saw the *Fox's* Signal to bear down under the *Victory's* Stern?

A. I did not take Notice of the *Formidable*; we obeyed the Signal.

Q. After you had received an Answer from the Vice-Admiral of the Blue to your Message, did you see any Signals made on board the *Formidable*, and if so, what were they?

A. There

A. There were some Signals made, but I do not recollect what they were.

Q. When you were speaking to the *Formidable*, was the Signal for the Line of Battle flying on board her?

A. I cannot speak with Precision to that.

Q. Did the *Formidable*, after you delivered your Message, keep close to a Wind or edge away?

A. I believe she still kept her Wind.

Q. Do you know of the *Formidable*'s being in the *Victory*'s Wake any Time in the Evening of the 27th of July?

A. No, I do not think she was.

Q. Were there any other Message or Words passed between the *Formidable* and *Fox* than you have related?

A. None that I remember, except the Cheers.

Q. What Sail had the *Victory* set when you received your Message?

A. I think she had her Fore-sail and her Top-sails.

Q. Was she going from the Wind, or by the Wind, at that Time?

A. Close to it, I should imagine.

Q. When you quitted the *Formidable*, how was the Vice-Admiral of the Red's Division situated with regard to the rest of the Fleet?

A. I think they then were stretching ahead of the Admiral's Division.

Q. Did you see distinguishing Lights on board the *Victory* in the Night of the 27th?

A. As clear as ever I saw Lights in my Life.

Q. Did you see distinguishing Lights on board the *Queen* that Night?

A. I did, as clear.

Q. Did you see distinguishing Lights on board the *Formidable* that Night?

A. We were ahead of the *Formidable*, I could not have seen them if they had been out.

Q. Did you see the *Formidable* at Day-break in the Morning of the 28th?

A. We expected to have been ordered to chase at Day-break, and I was busied on that Duty.

Q. How far was you from the *Victory* at the Time you made Sail after you left the *Formidable* to return to your Station?

A. We reefed, I think, as soon as we were well cleared of the *Formidable*; then we stretched ahead, and spoke to the *Arcturion*, and then went on to our Station, and I think Sir Robert Harland was leading his Division ahead of the Admiral at that Time.

Q. How far was you from the *Victory* when the *Fox* reefed her Top-sails, after speaking to the *Formidable*?

A. Three or Four Miles, I believe.

Prisoner asked,

Q. When Captain *Windsor* received the Message from the *Victory*, was the *Fox* upon her Weather or Lee-quarter, or where?

A. She was on the Lee-quarter; we were immediately within random Musquet-shot of the French Fleet; I suppose about a Mile.

Q. How many Ships were there formed astern of the *Victory*?

A. I do not know at all.

Q. Do you remember there were any?

A. Yes, I think there were some; I think we weathered some.

Q. Can you name the Ship that was next to the *Victory*?

A. No.

Q. Can you name any of those Ships that were there?

A. I cannot recollect what Ships they were.

Q. When you spoke to the *Formidable*, did

you not observe a Number of Men employed about the Rigging, which might have an Appearance to you of manning Ship, which has occasioned a Confusion about cheering?

A. Certainly there were Men appeared to me to be employed in every Part of the Ship.

Q. Do you remember observing Men in her Tops and about her Top-sail-yards, at that Time?

A. I have answered that before.

Q. Did it appear to you that we were about bending the Foretop-sail at that Time, the Top-yard being manned?

A. I have said there were Men on the Foretop-sail-yard, I believe they might be bending the Foretop-sail, but I cannot remember.

Q. Do you remember having said, that you thought we were bending the Foretop-sail upon a former Examination?

A. I believe I did, and I rather think now that they were bending the Foretop-sail.

Witness.

Captain John Jervis, of the *Foudroyant*; sworn.

The Order for holding the Court-Martial was read.

Q. Did you see the *Formidable* immediately after she came out of Action on the 27th of July, and what was her Position with respect to the *Victory*?

A. I did not see her immediately after coming out of Action.

Q. Did you see the *Formidable* on the Larboard Tack after she came out of Action?

A. No, I did not.

Q. Were any Signals made by Admiral *Kemp* on board the *Victory*, after the Rear Division had passed the Line of the Enemy, and the Firing had ceased?

A. The Signal to wear was first made, to the best of my Recollection.

Q. Did it appear to you that the *Formidable* repeated that Signal?

A. I did not see the *Formidable* repeat that Signal.

Q. Did you see the Signal repeated on board the *Arcturion*?

A. No, I did not, I saw it flying on board the *Victory*.

Q. How long did the *Victory* continue upon the Larboard Tack?

A. I cannot speak precisely as to the Time.

Q. What was the next Signal after the Signal to wear?

A. The Signal for the Line of Battle was the next Signal I saw on board the *Victory*, which was made very soon after the *Victory* wore the first Time, to the best of my Recollection, when she went upon the Larboard Tack.

Q. How soon after you came out of Action did you see the *Formidable*, and what Tack was she on?

A. I did not see the *Formidable* till near Three o'Clock, and she was then on the Starboard Tack.

Q. What Tack was the *Victory* on at this Time?

A. On the Larboard Tack. It was just before the *Victory* wore the second Time that I first saw the *Formidable*.

Q. Did it appear to you that the *Formidable* repeated the Signal for the Line?

A. I never saw the Signal for the Line flying on board the *Formidable*.

Q. Do

Q. Do you think that in passing the *Victory* the *Formidable* could see the Signal for the Line?

A. Yes, I should think so.

The Prisoner admitted seeing the Signal for the Line as he passed the Victory.

Q. What Time did the *Victory* wear from the Larboard to the Starboard Tack, and did she do it by Signal?

A. She did it by Signal, at or about Three o'Clock; the particular Minute I cannot ascertain.

Q. Was that Signal repeated, and by whom?

A. I cannot speak to the Repetition of that Signal. I was so near the Admiral in my Station, that I had no Occasion to look to the repeating Frigate for any Signal the Admiral made.

Q. Were any other general Signals made while the *Victory* was on the Starboard Tack till Dark, and what were they?

A. The Signal for the Line of Battle was kept flying till Dark, and afterwards I believe, for as much as I know, with an Interval of Eight or Ten Minutes that it was hauled down in some Part of the Afternoon, but I cannot speak to the precise Time when it was hauled down; and the Signal for Ships to Windward to bear down into the Admiral's Wake was made when that Signal was hauled down, and hoisted again after the Signal for the Line of Battle was again made; but the Time I cannot ascertain. There was another Signal made, but I do not conceive it as a general Signal, though it was made without Pendants flying for some Time, which is the Signal appointed by the Fourth Article of Admiral Keppel's additional Sailing Instructions; a *Spanish* Flag at the Maintopgallant Mast-head.

Q. Did the Vice-Admiral of the Blue repeat the Signal for Ships to come into the Admiral's Wake?

A. He did.

Q. Was the Signal for the Line repeated by the Vice-Admiral of the Blue?

A. I did not see it repeated by him.

Q. Did you take Notice of the *Fox* Frigate

being called by Signal to the Admiral in the Afternoon, and at what Time?

A. I cannot say I took Notice of the *Fox*.—I saw Frigates passing and repassing to and from the Admiral in the Afternoon, but I cannot speak to the Time.

Q. Did it appear to you, that Sir Hugh Palliser, by Signal or otherwise, signified to the Commander in Chief his Incapacity to obey the Signals which were made on board the *Victory*?

The Prisoner admitted he made no such Signal.

Q. Was the *Foudroyant* the nearest Ship aftern of the *Victory* after you wore to the Southward, and did she keep that Station the whole Afternoon, after the Action?

A. She was, after the Admiral wore the second Time, and went upon the Starboard Tack.

Q. Did you observe the *Fox* to stretch away upon the Larboard Tack by you at any Time that Evening?

A. I did not, that I recollect; I saw the Frigates pass and repass several Times, but I cannot speak to the *Fox* particularly, for I have discovered since, that I mistook one Frigate for another in hailing them.

Q. When the Admiral was on the Starboard Tack, standing to the Southward, what Number of Ships were formed in the Center Division at Six o'Clock?

A. I believe, to the best of my Recollection, all the Ships of that Division were in their Stations at Six o'Clock, except the *Sandwich* and the *Vengeance*.—The *Vengeance*, I conceive, was in the Admiral's Wake at that Time, but whether she was closed with the Ship that was to lead her, I am not positive—it is very difficult to ascertain that in a Line of Battle. In excepting the *Sandwich*, I do not mean to say she was not connected with the Center Division; I only mean to say she was not in the Place prescribed for her in the Line of Battle.

Adjourned till To-morrow Morning at Nine o'Clock.

EIGHTH DAY.

TUESDAY, the 20th of APRIL, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

Captain Jervis again called in.

Q. What was the Position of the Red Division at Six o'Clock in the Afternoon of the 27th of July?

A. I cannot exactly say.

Q. Was the Enemy at that Hour formed in a regular Line of Battle, and how did their headmost Ships bear from the Center Division of the *English* Fleet?

A. The Van of the Enemy appeared to be in a Line of Battle, steering very near parallel to Part of the Center Division; but I cannot say to what Number of Ships.

Q. What was their Distance from the Center of the *English* Fleet?

A. To the best of my Recollection, about Two Miles.

Q. What was the Position of the Vice-Admiral of the Blue at that Time?

A. The Vice-Admiral of the Blue was upon the Weather-quarter of the *Foudroyant*.

Q. At what Distance?

A. I should conceive, to the best of my Recollection, between Two and Three Miles.

Q. Was the *British* Fleet at any, and at what Time in the Evening of the 27th, in a Situation to have re-attacked the *French* Fleet, if the Vice-Admiral of the Blue, with his Division, had come down and formed in the Line?

A. I cannot speak positively to that Question.

Q. What were the Number of Ships of the Blue's Division with the Vice-Admiral of the Blue at the Period last mentioned?

A. I cannot ascertain the Number—the greatest Part of them appeared to me to be with him.

Q. Did it appear to you, that the Disobedience of the Vice-Admiral of the Blue, to the Signals which were flying, was the Reason the Attack was not renewed?

A. It

A. It was certainly the Reason the Fleet was not collected.

Q. At what Hour did the *Formidable* take her Station in the Line, in the Evening of the 27th of July?

A. At no Hour, that I saw.

Q. How long was it after the Action that the *Foudroyant* was repaired, and again fit for Action?

A. She was very fit for Action at Three o'Clock.

Q. When the *Victory* wore to the Southward, did she edge away from the Wind?

A. Soon after she wore she did.

Q. At what Rate did the *Foudroyant* go while she bore away, and what Sail was she then under?

A. I cannot speak precisely to the Rate she went, the Log-book would have expressed it; but I should think never much more than Three Knots—sometimes under—sometimes over;—it is impossible to recollect, at this Distance of Time, Knots and Fathoms:—Her Sail varied.—To the best of my Recollection, the Topails were double-reefed, and not near hoisted up, because they were much shot, and there was Danger of their giving way. The Foreail was in the Beginning down—sometimes up, to the best of my Recollection. We had Fore and Maintopails,—we had no Mizentopail.

Q. Do you recollect at what Rate she went after hauling her Wind, and if then under the same Sail?

A. To the best of my Recollection, when we hauled our Wind we were obliged to keep the Foreail up constantly, to keep in our Station astern of the *Victory*.—The going I cannot speak to positively, but she carried her Helm a-lee, I remember perfectly; consequently her Way could not be much.

Q. What was the Position of the Vice-Admiral of the Blue respecting the *Foudroyant*, just before you hauled your Wind on the Starboard Tack?

A. I don't know the Time exactly, therefore I cannot speak to the Bearings of the Vice-Admiral of the Blue; but it appeared to me that the Vice-Admiral of the Blue had increased his Distance, but altered his Bearings very little, at that Part of the Afternoon.

Q. Was the *Formidable* right astern, or how?

A. She was upon the Weather-quarter.

Q. At what Time did the Admiral haul his Wind?

A. I cannot say to the precise Minute.

Q. Had you increased your Distance from the *Formidable* during the Time of your going large, until you hauled your Wind?

A. The Distance was certainly increased, by the *Formidable's* appearing to keep her Wind, and the Admiral's steering large; but whether the *Formidable* increased her Distance; or the Admiral and the Center Division increased the Distance, I cannot speak to; but the Distance was increased, unquestionably, for the Vice-Admiral of the Blue was very near the Admiral when he wore, and the Distance was increased every Minute afterwards. The Court is to decide which increased the Distance.

Q. Did the Distance increase till you hauled your Wind?

A. Yes, the Distance was increasing undoubtedly.—From the Instant the Admiral wore, and was upon the Starboard Tack, till he hauled his Wind, the Distance appeared to me to be increasing between the Vice-Admiral of the Blue

and the Admiral—the Admiral steering large, and the Vice Admiral of the Blue appearing to me (but one cannot speak positively when a Ship is at a Distance) to be keeping his Wind; but whether the Admiral or the Vice-Admiral increased the Distance, I beg to be understood not to speak to.

Q. What Sail had the *Formidable* out at this Time?

A. Her Foretopail was unbent, but I cannot speak as to other Sails.

Q. When were the Center and Van formed in a Line of Battle in the Afternoon?

A. The Center I have already described, but the precise Hour of the Van getting into their Station, I really cannot speak to.

Q. Did the Sail the *Victory* carried, in the Evening of the 27th, between Five and Seven o'Clock, prevent the Vice-Admiral of the Blue's getting into his Station?

A. I know of no Impediment to the Vice-Admiral of the Blue's getting into his Station;—I should suppose not;—but I do not pretend to know the interior State of the *Formidable*.

Q. At what Hour were the particular Ships Signals of the Blue Division made to bear down in the *Victory's* Wake?

A. Having no Minutes, I cannot speak to the Hour.

Q. Were all or any of the Ships of the Blue Division in the Line in the Course of the Evening?

A. I did not see the whole there; I saw some of them bear away in consequence of their Signals.

Q. Did you see the distinguishing Lights on board the *Victory* in the Night of the 27th of July?

A. Most distinctly.

Q. Did you see distinguishing Lights on board the *Queen* that Night?

A. I cannot say I did;—there were a great Number of Ships between the *Queen* and me;—the *Victory* was so nigh me, and her Stern so high, that it intercepted the View of other Ships ahead.

Q. Did you see distinguishing Lights on board the *Formidable* that Night?

A. No, I did not.

Q. Describe the Position of the Vice-Admiral of the Blue when you first saw him at Day-break in the Morning of the 28th.

A. I do not recollect the Circumstances of his Position at that Time.

Q. What Time did the Vice-Admiral of the Red pass the *Foudroyant* to take his Station ahead of the *Victory*?

A. To the best of my Recollection, it was after Five o'Clock; but I cannot speak to the Minute.

Q. At what Time was the *Foudroyant* nearest to the *Formidable*?

A. About Three o'Clock, or a little after, to the best of my Recollection.

Q. Did you make any Observations in regard to her Condition, and the Sails she had out?

A. No; I was very attentive to taking my own Station in the Line of Battle at that Moment. I did not pay any particular Attention to the *Formidable*. The *Victory* and *Foudroyant* passed her very near in wearing from the Larboard to the Starboard Tack.

Prisoner's Question:

Q. When you passed the *Formidable* so near as you have described, did she appear to you to have suffered very much?

A. She certainly did appear to have her Sails very much shot.

Withdraw.

K

Vice-

*Vice-Admiral Sir Robert Harland, Bart.
sworn.*

Order for the Trial read.

Q. Did you see the *Formidable* in the Time of Action, and what were your Observations on the Vice-Admiral of the Blue's Behaviour?

A. I saw the *Formidable* before she came out of her Cannonade, but not in the Beginning of it. My Observations were fairly these:—I think that there was Merit in carrying on the Fire of the *Formidable*; but it was equal Merit with every Ship that went before, and that followed the *Formidable*, in passing the *French* Line. More was not necessary than that; for it established, in my Opinion, at that Time, the good Behaviour, in that Instance, of every Individual that was concerned in Command. But the Court, I presume, has observed, in pursuing the *French*, in the Way we did that Day, was a bold, and necessary, and allowable Stroke in War, where nothing but Risk, as it appeared, could stop the *French* Fleet from getting off. The great and decisive Strokes of the Day were to follow, by closing with the Enemy, and fighting it out.

Q. Did you see the *Formidable* on the Larboard Tack after she came out of Action?

A. Upon the Oath I have taken, I never saw the *Formidable* upon the Larboard Tack.

Q. At what Time did you first see the *Formidable* on the Starboard Tack after coming out of Action?

A. To the best of my Recollection, it was when I passed her to Leeward to form astern of the Fleet with my Division, my Division being then on the Starboard Tack.

Q. Did you see the *Victory* on the Larboard Tack, and what general Signal had she then flying?

A. Certainly I did; I was ahead of the *Victory*, or at least narrow upon her Bow, and I never saw the Signal for the Line of Battle upon the Larboard Tack. I have heard that there was that Signal, and I suppose it has been pretty well confirmed.

Q. At what Time was it that you passed the *Formidable* to take your Station in the Rear?

A. To the best of my Recollection, between Three and Four o'Clock.

Q. At what Time did the Red Division quit that Position to go to their Station ahead of the Center?

A. About Five o'Clock.

Q. Was the Sail the *Victory* carried, when you passed her to take your Station ahead, such as to prevent the Vice-Admiral of the Blue, with his Division, from taking their Station in the Line?

A. The Vice-Admiral of the Blue and his Division were to Windward. The Commander in Chief carried but little Sail; consequently, if the Vice-Admiral of the Blue and his Division had made a proportionable Sail, there was nothing to prevent them, that I know of.

Q. What was the Position of the Center of the Red Division relative to the *Victory* at Six o'Clock, and how far distant from her?

A. About Six o'Clock the Center of the Red Division was nearly, if not quite, in the Line in its Station ahead.

Q. At what Time was the Red Division formed in a regular Line of Battle ahead of the Center, and what Number of Ships were in it?

A. All the Division were; at about Six o'Clock, or before Seven, except the *Monarch* and *Berwick*;

and I am not quite sure whether they were or not at that Time; they were either there, or very near it; they soon came to me afterwards. I would confine Time to about Half an Hour; I cannot be much erroneous more than that.

Q. When you got into your Station in the Line, in the Evening of the 27th, do you think there was Day-light enough to have renewed the Action, had the Vice-Admiral of the Blue with his Division been in their Station in the Line?

A. On the 27th of July, it was not dark till near Nine o'Clock; therefore I think there was full Time, if the *French* Fleet had remained where they were.

Q. What was the Position and Distance of the headmost Ship of the *French* Fleet with respect to the *Queen* at the Time the Red Division were formed in the Line?

A. The *French* Fleet were ranging up in a parallel Line, at less than Two Miles Distance from us; and their headmost Ship at that Time, to the best of my Recollection, when I first got into my Station, had led on to the Southward of the *Victory*, and had got far enough to be pretty near abreast of the *Queen*.

Q. Was the *French* Fleet at that Hour in a regular Line of Battle?

A. As to Direction, it appeared to me they were; but not as to Distance;—they were not closed.

Q. What was the Position and Distance of the Vice-Admiral of the Blue and his Division at that Hour?

A. My Answer to that Question must be, that I know they were to Windward of the Red Division; but my Attention was to my own Division and the *French* Line; and the Court will come at more exact Information, as to the Distance and Position of them, from every other Witness, than they can have from me in that Particular.

Q. Did you see the general Signals repeated or obeyed by the Vice-Admiral of the Blue during the Afternoon of the 27th of July?

A. The Position I was in allowed of my seeing all the Signals that were made after the Commander in Chief wore to the Southward that Afternoon. The Signal for Ships to Windward to come into the Admiral's Wake I saw repeated by the Vice-Admiral of the Blue, which I did not see obeyed by him, nor any of his Division. Signals that followed after that Time were obeyed by Part of that Division.

Q. Was the Signal for the Line of Battle repeated or obeyed by the Vice-Admiral of the Blue?

A. As I understand that Signal, it was not obeyed by the Vice-Admiral of the Blue or his Division.—I never saw the Vice-Admiral of the Blue repeat the Signal for the Line.

Q. Was the Signal for the Line flying on board the *Queen* all the Afternoon, and when was it hauled down?

A. It was flying, and not hauled down at all.

Q. Had the Signal for the Line been flying on board the *Formidable*, do you not think, from the Position you were in, you should have seen it?

A. I did not expect to see it flying there, therefore I did not particularly look for it.

Q. Why did you not expect it?

A. I had then, and I have now, too great an Opinion of the Knowledge of the Vice-Admiral of the Blue to think that he would have repeated that Signal, which, in my Opinion, would have commanded his Division to him, when he made no Attempt, that I saw, to comply with it himself.

Q. Did

Q. Did you perceive any Impediment to the Vice-Admiral of the Blue's getting into his Station in the Afternoon?

A. The *Formidable* had not lost a Mast nor even a Yard, that I saw; therefore there was no material Reason appeared to me for his not doing it.

Q. Do you think that the Vice-Admiral of the Blue's not bearing down into his Station, was the Reason the Attack was not renewed in the Evening of the 27th?

A. If the Vice-Admiral of the Blue had been in his Station in the Line with his Division, to suppose that the Attack would not have been renewed that Afternoon, is supposing that the Commander in Chief would not have renewed it at all.

Q. What was the Situation of the *Formidable* when you first saw her in the Morning of the 28th?

A. I do not remember to have made any Observation upon the Situation of the *Formidable* in the Morning of the 28th; I make no Doubt but I did, but I do not recollect any Thing about the *Formidable*: The Thing was over, and I looked no farther to her.

Q. Did you carry distinguishing Lights in the *Queen*, on the Night of the 27th?

A. I certainly did that Night, and every Night.

Q. Do you know of any Thing further concerning the Conduct and Behaviour of Sir Hugh Palliser, during the 27th and 28th of July, either before, in, or after the Action, than you have already related, which you think reprehensible, and may be necessary for the Information of the Court?

A. I should be very sorry if I knew more than the Court knows about that.—I know they have the Minutes of a former Trial before them for their Information; they have also the Evidence of great and able Officers upon this Trial; so that, as I am persuaded the Court are, and will be, fully informed of every Thing to enable them to pass an unerring Judgment, I have nothing more to say.

Q. Is the Court to understand from what you have said, that you know of nothing further reprehensible in the Prisoner's Conduct?

A. So far from endeavouring to recollect new Matter of Information to charge or load the Prisoner with, it has been my Endeavour to forget what I thought I saw amiss, as far as I could.

Q. When you passed between the *Victory* and *Formidable* to take your Station ahead, what Distance might you be from each Ship when you passed nearest between them?

A. As well as I recollect, I was pretty near at an equal Distance, about a Mile and a Half; the *Formidable* was about three Miles from the *Victory*, I believe, but I do not speak from accurate Observation or Recollection; the loose Idea I have is of that Distance.

Q. When the Red Division got into the Line of Battle in the Evening of the 27th, what Sail were you under, and how many Knots did you go?

A. As well as I can recollect about two Knots; under three Knots, with the Sail I then carried; which was such a Sail as was necessary to keep our Station in the Line.

Withdraw.

Honourable Captain John Leveson Gower, late of his Majesty's Ship *Valiant*, sworn.

Q. Did you see the *Formidable* on the Larboard Tack immediately after she came out of Action on the 27th July?

A. No.

Q. Did it appear to you that the general Signals made on board the *Victory* were repeated on board the *Formidable* during the Afternoon of the 27th?

A. I never saw any Signal on board the *Formidable*, but the Blue Flag at the Mizzen-peak, besides Pendants; but I did not see any Thing of the *Formidable* till after I made Sail, which I fancy was about Three o'Clock; the Fleet then on the Starboard Tack.

Q. What Sail was the *Formidable* under when you first saw her?

A. Her Foretopfail was unbent, but I am not clear what Sail she had set.

Q. What was the Position of the *Valiant* after you were on the Starboard Tack, relative to the *Victory*?

A. The Ship next a-head of her in the Line.

Q. Did the *Valiant* at any Time pass near the *Formidable*?

A. No.

Q. At what Time did the Red Division pass the *Valiant* in going from the Rear to take its Station in the Van?

A. I fancy something after Five o'Clock.

Q. What were the Distance and Position of the Vice-Admiral of the Blue at this Time, with respect to the *Valiant*?

A. I did not set her by Compass, but I should suppose about two or three Points abaft the Beam, and I fancy about Two and a Half or Three Miles, as near as I can guess.

Q. Did the *Formidable* appear to you not to be in a Condition to obey the Signals which were made in the Course of the Afternoon?

A. All her Masts and Yards were standing, and only her Foretopfail unbent, that I recollect to have seen.

Q. Did it appear to you that the Vice-Admiral of the Blue's not obeying the Signals was the Reason the Attack was not renewed in the Afternoon?

A. I thought so at that Time.

Q. At what Hour did the *Formidable* get into her Station in the Admiral's Wake in the Evening?

A. I never saw her go into her Station.

Q. At what Rate did the *Valiant* go, while she bore away, and what Sail was she under?

A. The Log was never hove, for we were always backing and filling—we had double-reefed Topails, the Lee-clew Garnett of the Forefail generally hauled up, and our Mizentopfail, sometimes full and sometimes aback, but our Sails were very much cut and torn:—This is till Dark.

Q. Was the Sail the *Victory* carried such as to prevent the *Formidable* from getting into her Station?

A. I should suppose not; for the *Formidable* must have gone very much from the Wind to have got into her Station.

Q. Did you see any Efforts made use of on board the *Formidable* to enable her to get into her Station?

A. I

A. I did not.

Q. What was the Position of the *Formidable* with respect to the *Valiant*, when you first saw her in the Morning of the 28th?

A. I do not remember to have taken Notice of her at that Time.

Q. At what Time in the Afternoon was the Red Division formed in the Station ahead?

A. I suppose about an Hour after passing the *Valiant*.

Q. What was the Position and Distance of the headmost Ship of the *French Fleet* at this Time, from the *Valiant*?

A. The fourth or fifth Ship was abreast of, and about Two Miles distant from the *Valiant*, I suppose.

Withdrew.

Captain John Macbride, of the Bien-faisant, sworn.

Q. Did you see the *Formidable* on the Larboard Tack, after she came out of Action on the 27th of July?

A. No.

Q. Did it appear to you that the general Signals made on board the *Victory* were repeated by the *Formidable*, from the Time of her coming out of Action till Night?

A. I saw the Signal for coming into the Wake repeated, but no other.

Q. How soon after the *Bienfaisant* came out of Action did you see the *Formidable*, and what Tack was she then upon?

A. Just after I was about, as the Signal for Battle was not hauled down, I had determined with myself to follow Sir Robert Harland, who was leading with such of his Division as could follow him; the Signal for Battle was soon hauled down, and that for the Line ahead then made: upon which I bore away to join the Admiral, to whose Division I belonged, and then I observed the *Formidable* meeting her upon the Starboard Tack.

Q. At what Time was this?

A. About Two o'Clock, I reckon, but I cannot speak accurately as to Time.

Q. What Sail was the *Formidable* under at this Time?

A. I believe her Topsails and Foresail, her Jib, which had been shot away, hanging down in the Water, off the End of the Boom.

Q. At what Distance was the *Formidable* from the *Victory* at this Time?

A. I was a little Way astern of the *Victory*, I suppose I might be about a Mile astern, the *Victory* was about in the Middle; I suppose the *Formidable* might be about Two Miles, or Two Miles and a Half, from the *Bienfaisant*.

Q. What was the Position of the *Bienfaisant*, after you was upon the Starboard Tack, relative to the *Victory*?

A. After the *Formidable* and *Victory* had passed each other, finding that the *Formidable* continued upon the Starboard Tack, and that Sir Robert Harland was gone into the Rear, I formed ahead of the *Victory*, concluding that the Line was going to be inverted, and that the Blue Division were to form upon the Starboard Tack ahead, and I continued so till about Five o'Clock, when my Signal was made, as well as that of the *Prince George*, to get into our Stations astern, and which we immediately obeyed.

Q. At what Time did the Red Division pass the *Bienfaisant*, in going from the Stern ahead of the *Victory*?

A. Between Five and Six o'Clock, they weathered me about a Mile and a Half or Two Miles.

Q. What was the Distance and Position of the Vice-Admiral of the Blue at this Time with respect to the *Bienfaisant*?

A. Upon my Weather-beam about Three Miles; the Red Division passed between us.

Q. Was you ahead or astern of the *Victory* at this Time?

A. The *Bienfaisant* was the sternmost Ship that was formed.

Q. Did the *Formidable* appear to you not to be in a Condition to obey the Signals made in the Course of the Afternoon?

A. It did not appear to me that she was not in Condition to obey those Signals; her Foretop-sail only was unbenet; what her other Reasons are, I can be no Judge of.

Q. Did it appear to you that the Vice-Admiral of the Blue not obeying the Signals was the Reason the Attack was not renewed on the 27th of July?

A. I believe it was.

Q. At what Hour did the *Formidable* get into her Station in the Admiral's Wake in the Evening?

A. She never got there at all.

Q. At what Distance was the Red Division in the Line ahead of the Center?

A. I should imagine about Six o'Clock, or a little after.

Q. At what Rate did the *Bienfaisant* go, while she bore away with the Admiral to the Southward?

A. About Five Miles an Hour, I suppose, I have no Log; we were going large.

Q. How long did the *Bienfaisant* continue to bear away in the Afternoon?

A. I should think about Half an Hour, until I joined the Admiral.

Q. After the *Victory* hauled her Wind on the Starboard Tack, was the Sail she carried such as to prevent the Vice-Admiral of the Blue's getting into his Station?

A. No, by no Means, because the *Formidable* kept very good Company with us without her Foretop-sail.

Q. What was the Position of the *Formidable* when you first saw her at Day-light in the Morning of the 28th?

A. At Day-light my Attention was taken up with the *French Ship* that was left behind, that shewed the Lights abreast of me all Night; being the nearest Ship to her, I concluded the Admiral would make my Signal to chase; it was made, and I chased the Ship Half an Hour; and when the Signal was made to call me in, upon hauling to join the *Victory* again, I saw the *Formidable* pretty near upon the *Victory's* Weather-quarter, in the South-west.

Q. Did you see the distinguishing Lights of the different Admirals on the Night of the 27th?

A. I saw the *Victory's* Lights very plain, I was Three Miles astern of her; but I took no Notice of any other Lights.

Discharged from further Attendance.

Withdrew.

Adjourned till To-morrow Morning at Nine o'Clock.

N I N T H D A Y .

WEDNESDAY, the 21st of APRIL, 1779.

THE Court met according to Adjournment.
The Prisoner was brought in, and Audience admitted.

Captain Isaac Prescott, late of the *Queen*,
sworn.

Q. Did you see the *Formidable* on the Larboard Tack after she came out of Action?

A. I did not.

Q. At what Time did you first see the *Formidable* on the Starboard Tack after coming out of Action?

A. I observed her on the Starboard Tack, while she was in and coming out of Action, and after she was out of Action; but cannot speak as to Time, and I never saw her on the Larboard Tack.

Q. Did you see the *Victory* on the Larboard Tack, and what general Signals had she then flying?

A. I did see the *Victory* on the Larboard Tack; at about Three o'Clock she made the Signal to wear to the Southward, which we repeated; and in the Action of wearing I observed to the Admiral Sir Robert Harland, that the *Victory* had the Signal flying for the Line of Battle, which we repeated likewise immediately.

Q. At the Time you saw the *Formidable* come out of Action, where was the *Victory*?

A. I really cannot speak as to that, I do not recollect.

Q. When you saw the *Formidable* come out of Action, what Situation did she appear to you to be in with respect to her Sails and Rigging?

A. Her Foretop-sail-yard appeared to be on the Cap, or near it; I made no other Observation on her.

Q. As you saw the *Formidable* in Action, in what Manner did it appear to you she was engaged?

A. Very handsomely and properly.

Q. At what Time was it that you passed the *Formidable* to take your Station in the Rear?

A. To the best of my Recollection, between Half past Three and Four o'Clock.

Q. Did you make any further Observations on the *Formidable* at that Time?

A. No, I did not.

Q. Was it by Orders from the Admiral that you took your Station in the Rear, and how were they conveyed to you?

A. The Orders were conveyed to us by hailing from the *Proserpine* to form in the Admiral's Rear.

Q. Was there any Cheering between the *Proserpine* and *Queen*?

A. None.

Q. At what Time did the Red Division quit the Rear to go to its Station ahead of the Center?

A. Nearly at Half after Five, or rather after—I cannot speak precisely.

Q. Was the Sail the *Victory* carried, when you passed her to take your Station ahead, such as to prevent the Vice-Admiral of the Blue with his Division from taking their Stations in the Line?

A. Certainly not.

Q. When the *Queen* passed between the *Victory* and *Formidable*, to take her Station ahead, what Distance might the *Queen* be from each Ship, when exactly between them?

A. I cannot speak as to Distance; we passed to Windward of the *Victory*, the *Formidable* was to Windward of us.

Q. Was any Message received on board the *Queen* from the *Victory* after that sent by the *Proserpine*, at what Time was it received, and what was the Message?

A. At Half past Five nearly, the *Milford* brought us Orders from the Admiral to make Sail ahead, and form in our Station.

Q. Was it delivered by hailing?

A. It was.

Q. After the Message was received, how long was it before the Red Division got into its Station in a Line ahead of the Center?

A. To the best of my Recollection, it was a little after Seven; it might be a Quarter after, or near that Time; I cannot speak exact to a Moment.

Q. What Sail did you keep under, and at what Rate did you go from that Time till after Dark?

A. For the first Hour after we gained our Station, we went three Knots; and from that Time we went from two Knots four Fathoms to one Knot six Fathoms, as has appeared to me by the Log. We had double-reefed Top-sails and Fore-sail, to the best of my Recollection; sometimes the Mizentop-sail was aback, and sometimes full, to keep in our Station.

Q. When you got into your Station in the Line, in the Evening of the 27th, do you think there was Day-light enough to have renewed the Action, had the Vice-Admiral of the Blue, with his Division, been in their Station in the Line?

A. I do.

Q. What was the Position and Distance of the headmost Ship of the *French* Fleet with respect to the *Queen*, at the Time the Red Division were formed in the Line?

A. I cannot answer that Question with any Degree of Certainty. I cannot ascertain the Position of the headmost Ship.

Q. Was the *French* Fleet at that Time in Line of Battle?

A. They were in a Line of Battle to Leeward.

Q. What was the Position and Distance of the Vice-Admiral of the Blue and his Division at that Hour?

A. I did not attend to them at that Hour.

Q. Were the general Signals, particularly for the Line, repeated or obeyed during the Afternoon by the Vice-Admiral of the Blue?

A. I did not observe them.

Q. Was the Signal for the Line of Battle flying on board the *Queen* all the Afternoon, and when was it hauled down?

A. To the best of my Recollection, it was flying not only all the Afternoon, but all Night.

Q. Did you perceive any Impediment to the Vice-Admiral of the Blue's getting into his Station in the Afternoon?

A. I did not observe any other Impediment but the Foretop-sail being unbent.

L

Q. Do

Q. Do you think that the Vice-Admiral of the Blue's not bearing down into his Station was the Reason the Attack was not renewed in the Evening of the 27th?

A. I do apprehend it was.

Q. Did you carry distinguishing Lights in the *Queen* on the Night of the 27th July?

A. We did.

Q. What was the Situation of the *Formidable* when you first saw her in the Morning of the 28th July?

A. I did not attend to her at all.

Q. What was the Situation of the *Queen* with respect to the *Victory* on the Morning of the 28th?

A. I am unequal to an Answer; I was not upon Deck at Day-break.

Prisoner's Questions:

Q. You have said that you saw the Signal for wearing and the Signal for the Line flying on board the *Victory* at the Time she was wearing—Do you mean to say, that those Signals were then hoisted, or whether they might not have been up some Time before?

A. I apprehend the Signal for the Line might have been up some Time before; I wished to be so understood when I answered the Question. It was in the Act of wearing I observed the Signal for the Line. I did not see it at the Moment of its being made; therefore I apprehend it might have been up some Time.

Q. Did you see the Signal for wearing hoisted?

A. We heard some Gun, which might draw our Attention to the *Victory*; I will not say I saw the Gun fired and the Pendant hoisted in my own Person.

Q. Did you observe the Blue Flag at the Mizzen-peak at the same Time with the Signal for the Line, at that Time, or how soon after?

A. It was almost as immediately as the first Message was delivered to us by the *Proserpine*. The Blue Flag at the Mizzen-peak was hoisted, to the best of my Remembrance, about Half after Three o'Clock, or sooner.

Q. You did not then see it hoisted with the Signal for the Line, but by itself?

A. I did see it hoisted with the Signal for the Line, about Half after Three, to the best of my Recollection. We repeated it on board the *Queen*.

Q. At the Time you did see that Signal, was not the Red Division considerably to Windward of the *Victory*?

A. That Part of the Division which was with the Flag was to Windward of the *Victory*.

Q. How many were there?

A. To the best of my Recollection, Seven.

Q. Was not the *Formidable* the last Ship that left the Enemy and joined the *Victory*?

A. She was the last Ship I saw firing on the Enemy. I know nothing of her joining the *Victory*.

Q. You have said, that the Sail the *Victory* carried, in your Opinion, could not prevent the *Formidable* from getting into her Station—Do you know the Condition the *Formidable* was in?

A. It is impossible I should know any thing of the Condition of the *Formidable* at that Time, but from my own Observation.

Q. At the Time you speak of the Red Division's being formed in the Line ahead, was the whole Division formed?

A. I have answered that Question on my Examination by the Court; I did attend to it.

Q. Can you recollect whether the *Monarch* and

Berwick were so completely refitted as to be able to get into their Stations?

A. I cannot recollect.

Q. Was it not very cloudy, close, and squally Weather, blowing fresh in the Evening of the 27th?

A. It did blow fresh, and had the Appearance of more Wind.

Court's Question:

Q. Do you mean the Weather was such during the whole Afternoon after the Action, or in the Evening only?

A. I mean in the Evening only; because from Twelve to Three and Four in the Morning we went about one Knot six Fathoms and one Knot five Fathoms under the same Sail that we went before.

Withdrew.

Sir Charles Douglas, *Bart.* late of the *Stirling Castle*, *sworn.*

Q. After coming out of Action on the 27th of July, was the *Stirling Castle*, the Ship you then commanded, one of the Number that tacked with the Vice-Admiral of the Red, and stood after the Enemy?

A. She was.

Q. When you first saw the *Formidable*, what Tack was she on, and did she appear to you much disabled?

A. When I first saw the *Formidable* I was standing back again to the Southward on the Starboard Tack, following Sir Robert Harland. I do not recollect the Time when I repassed the *Formidable*; but it was then I first took notice of her; she was then on the Starboard Tack; she appeared to have suffered considerably in Battle in her Sails and Rigging; I thus repassed her to Leeward of her.

Q. What Tack was the *Victory* on, and what general Signals were then flying?

A. The *Victory* was also on the Starboard Tack; the Signal for the Line of Battle, and the Blue Flag at the Mizzen-peak for Ships to bear down into her Wake, were then flying.

Q. How was the *Formidable* situated with respect to the *Victory* at the Time you first saw those Signals flying?

A. Broad upon the *Victory's* Weather-quarter; but I cannot at this Distance of Time ascertain how many Points abaft the *Victory's* Beam.

Q. Can you speak to the Distance?

A. I cannot positively ascertain the Distance, but I should think rather more than less than Two Miles; it might be Three Miles.

Q. Did the *Formidable* appear to you to have got into her Station in the Afternoon, in Obedience to the Signal then flying?

A. No.

Q. At what Time in the Evening did you get into your Station?

A. I do not positively recollect; but I got into it as soon as I could, and as nearly as the slow Progress, and therefore irregular Way of the Division, did with Safety admit.

Q. Did you see any Impediment to the *Formidable's* getting into her Station in the Afternoon?

A. I am not aware of any.

Q. Did you see the distinguishing Lights on board the *Queen* in the Night of the 27th?

A. I did frequently.

Q. Did you see the distinguishing Lights on board the *Formidable* that Night?

A. I

A. I did not see the *Formidable* during the Night, until at or about the first dawning of the Day of the 28th, when I observed a Ship coming up, upon the Weather-quarter of the *Stirling Castle*, having a Flag at her Foretopmast-head, but having neither distinguishing Lights burning nor Ensign flying.

Q. Do you know that Ship to have been the *Formidable*?

A. I do.

Q. From what Circumstances are you enabled to say positively it was the *Formidable*?

A. From having, after she passed along before my Beam towards the Weather-bow, I do not exactly know how many Points, seen her, having then a Blue Ensign flying, and then distinguishing clearly the Flag at her Foretopmast-head to be Blue, which I had not been able to do until she passed me before my Weather-beam.

Q. Are you sure she was a Three-decked Ship?

A. Most undoubtedly, having seen Lights upon her Middle deck.

Q. How was you situated with respect to the *Queen* at that Time, and also with respect to the *Victory*?

A. I do not positively recollect how the *Stirling Castle* was then situated with respect to the *Queen* and the *Victory*, not having had my Eye fixed upon either of them. I was rather upon the Weather-quarter of the *Berwick*, my immediate Leader in the Line of Battle, whom I ever kept in my Eye, until the Ship in Question claimed an equal Share of my Attention.

Q. Did you see the *Queen* or *Victory* at that Time, or either of their Lights?

A. At that particular Time I saw the *Queen's* Lights, and the *Victory's* Lights. I beg to make one Remark, to satisfy the Court, that when bearing up, to get more precisely into my Station, as the Day advanced, that I could with Safety do so, on seeing the Ship alluded to, with her Ensign and Blue Flag, I could not help wondering, without accounting, however, in my own Mind, how it happened, or whence it came, that the two Vice-Admirals were so near each other.

Q. How was the Weather in the Evening of the 27th, and at the Time you saw the *Formidable* in the Night?

A. To the best of my Recollection, but I do not pretend exactly to recollect, the Weather was a little squally, some Time partially hazy; so as to conceal for some little Time one Ship, and admit of another being seen.

Q. Describe the Position of the Three Divisions, as nearly as you can, as the Day came on.

A. The Center and Van Divisions were in a Line of Battle, agreeable to the Signal, to the best of my Knowledge and Belief, as nearly as their slow Sailing did admit of their keeping themselves; but I cannot, with any Degree of Precision, speak as to the rest of the Fleet; though I did see other Ships, I cannot say how many, on my Weather-quarter, soon after I first got Sight of the *Formidable*.

Q. Did you perceive at any Time in the Morning of the 28th, after the *Formidable* passing the *Stirling Castle* as the Day came on, that the *Formidable*, on perceiving her Mistake, endeavoured to regain her Station?

A. After having been fully satisfied of that Ship being the *Formidable*, by the Display of her Blue Ensign, and the Colour of her Flag at the Foretopmast-head; being quite at Ease as to her Identity, I took no further notice of her.

Q. At what Time in the Evening of the 27th

July did the Red Division get into the Line of Battle?

A. I do not recollect.

Q. When did the *Monarch* and *Berwick* get into their Station in the Line in the Afternoon?

A. I do not recollect.

Q. Was you one of the Division that formed astern of the *Queen*?

A. I was.

Q. At what Time did you pass the *Queen*, the *Victory*, and the *Formidable*; and what was your Distance from each Ship?

A. I have said I could not speak as to the Time I passed the *Formidable*, nor exactly as to the Distance she was from the *Victory*; I have said within two or three Miles, or it might be three Miles; nothing is so deceiving as Distance at Sea. I have to observe, that the Ship named the *Formidable* must have been seen from the *Berwick*, my immediate Leader; and if necessary, there are two Persons on board the *Duke*, whose Testimony may be adduced as to seeing the *Formidable* in the Morning of the 28th; their Names are, *George Hyton*, Captain's Clerk, and *John Spencer*, Coxswain of the *Duke*.

Prisoner's Questions:

Q. You said you did not know whether the *Berwick* got into her Station in the Line before Night.

A. That Question was not asked me; that was in the Morning—I do not recollect—but I was astern of the *Berwick*, which was my Station in the Afternoon—the *Cumberland* was ahead of her, and the *Shrewsbury* ahead of her, and so on in Order.

Q. You have described the Weather to have been squally and hazy, so as to intercept the View of the Ships; might not you, under those Circumstances, be deceived in imagining you saw a Flag at the Ship's Mast-head?

A. I have described the Weather to have been squally, to the best of my Recollection, and partially hazy; but that did not operate with regard to the first View I had of the Flag at the *Formidable's* Foretopmast head; the Weather being then clear in that Quarter, though hazy in the opposite one. Moreover, the Day was just beginning to dawn; so that I could not be mistaken as to the Flag in Question being there flying, though I could not yet ascertain its Colour.

Q. You mentioned that Ship, as having no Ensign nor distinguishing Lights; do you consider that as a Proof of its being the *Formidable*, or a Cause of Doubt?

A. I did then, because thereof, consider it as a Cause of Doubt; and was therefore not without Suspicion that the *French*, by having made a Trip on the Larboard Tack, had possibly doubled upon our Rear, in order to regain the Weather-gage. In consequence whereof, I ordered such of our Preparations for Battle as had been for some Time discontinued, to be resumed, excepting, to the best of my Remembrance, the opening our Lower-deck Ports, and consequently running out the Lower-deck Guns; but having traced this Ship forwards, as already described, there was not the smallest Doubt left upon my Mind of its being the *Formidable*.

Q. You have mentioned, that you afterwards saw her with a Blue Ensign; having first observed that she had no Ensign, and that as a Confirmation of your Opinion of its being the *Formidable*—Does not every Ship of the Blue Division hoist a Blue Ensign, as well as the *Formidable*?

A. Yes; but the *Formidable* alone wears a Blue Flag at the Foretopmast-head.

Q. Do

Q. Do you remember, in the Morning of the 28th after Day-light, seeing any Ship of the Blue Division near the *Stirling Castle*, particularly the *Robust*?

A. I remember to have seen, as I think I have said before, Ships pass to Windward of the *Stirling Castle*, after having first seen the *Formidable*; but no one of them passed so near me as to have particularly attracted my Attention.

Q. Do you remember nothing at all about the *Robust* at that Time in the Morning?

A. I do not; it was impossible for me to know any Ship by Name at that Time.

Q. You said you saw other Ships passing you; do you mean passing ahead or astern?

A. To Windward of me, going forwards.

Q. At what Distance do you suppose that Ship was from you when you saw the Blue Flag and Ensign flying, and as she passed ahead before the *Stirling Castle*'s Beam?

A. I cannot speak to the Distance she was from me, when I first perceived she had a Blue Ensign flying.

Q. Did you never take notice of that Ship after Day broke, to see whether she continued to go ahead of the Red Division?

A. I have answered that already with great Precision.

Court's Questions:

Q. Can you say that the Ship was within Hail when she passed you?

A. By no Means within Hail; something less than Half a Mile.

Q. Did you observe that Blue Flag with the Glafs or the naked Eye?

A. With my naked Eye; and no Soul on board the Ship, I believe, ever doubted of its being the *Formidable*.

Withdrew.

Captain John Laforey, late of the Ocean, sworn.

Q. What was the Situation of the Blue Division in the Morning of the 27th *July*, relative to the Center Division?

A. I was a long Way astern of the Blue Division in the Morning—I could not judge from my Situation of theirs with respect to the *Victory*, except that, I believe, they were about Three Miles to Leeward.

Q. Was the *Ocean* one of the Ships that chased by Signal, in the Morning of the 27th *July*?

A. No.

Q. How near was your Situation, in Action, relative to the *Formidable*, and what were your Observations on the Behaviour of the Vice-Admiral of the Blue at that Time?

A. I was upon the Lee-bow of the *Formidable* when I was engaged;—I made no particular Observations upon the Behaviour of the Vice-Admiral of the Blue.

Q. How long did the *Ocean* come out of Action before the *Formidable*?

A. I cannot tell.

Q. What Distance was the *Ocean* from the *Formidable* after the Action ceased?

A. The *Ocean*, after she came out of the Action, might be about three Cables Length upon the Lee bow of the *Formidable*.

Q. Was the *Ocean* much disabled in Action?

A. Her Sails and Rigging were very much cut, but she had very little Damage in her Hull—her Masts were wounded.

Q. Did you take notice of the Condition the *Formidable* was then in?

A. I observed the *Formidable*'s Sails to be very much torn and cut, I could not see any other Damage she had received.

Q. What Time did the *Ocean* wear to the Larboard Tack, and did she do it by Signal?

A. The *Ocean* wore to the Larboard Tack about Half past Two, which was as soon as she could be got into a Condition to go about; I attempted to stay her, which we failed in, in order to fetch into my Station; being to Leeward, I did not see the Signal to wear.

Q. Did you see the *Formidable* on the Larboard Tack?

A. No.

Q. Did you observe the Signal for the Line flying on board the *Victory*, while on the Larboard Tack?

A. Yes.

Q. Did you see the Signal for the Line flying on board the *Victory* in the Afternoon, while on the Larboard Tack?

A. Yes, I saw the Signal for the Line of Battle on board the *Victory* when she crossed me, she upon the Larboard, and I upon the Starboard Tack; and I likewise saw the Signal for the Line on board the *Victory*, when we were all upon the Starboard Tack in the Evening.

Q. How far was the *Formidable* from the *Victory* when you passed the *Victory*, as she was standing upon the Larboard Tack?

A. I cannot recollect the Distance, but I remember I had been about Half an Hour out of Action when the *Victory* crossed me.

Q. Did you see the Signal for the Line repeated on board the repeating Frigate?

A. No, I do not recollect seeing any of the Signals on board the repeating Frigate.

Q. How long after you came out of Action was it before the *Ocean* was in Condition to take her Station to renew the Action?

A. About an Hour.

Q. Did you see the Signal for the Line repeated on board the *Formidable*?

A. No.

Q. Did the *Formidable* bear down into her Station in the Line of Battle?

A. No.

Q. Did the *Ocean* bear down in consequence of the Signal that was flying?

A. The *Ocean* did not bear down in consequence of the general Signal, but bore down as soon as her particular Signal was thrown out.

Q. At what Hour might that be?

A. About Seven.

Q. Did there appear to you any Disability in the *Formidable* to bear down into the Line?

A. There did not appear to me any, but that of her Foretop-sail being unbent.

Q. At what Time in the Afternoon did you get into your Station in the Vice-Admiral of the Blue's Division?

A. Between Three and Four o'Clock, I believe.

Q. Did you keep your Wind, or edge away, from the Time you got into that Position till Seven o'Clock?

A. I do not recollect whether we kept our Wind close or not.

Q. What Sail did you carry, and how many Knots did you go, from the Time you got into your Station in the Blue Division, till Seven o'Clock?

A. I do not recollect how many Knots we went, but

but I think we had our Three Topfairs and Fore-fail set.

Q. Were your Topfairs reefed then?

A. My Foretopfail was close reefed;—the Fore-topmast was shot half through a little above the Cap:—I do not recollect whether the Main and Mizentopfairs were close-reefed or not.

Q. In what Condition did the *Formidable* appear to you during that Period, and what Sail did she carry?

A. I do not recollect what Sail she carried, nor do I recollect any Thing of her Condition, more than I have already mentioned.

Q. What were the different Bearings of the *Victory* at Five and Six o'Clock from the *Ocean*, and what was your Distance from her at those Times, to the best of your Recollection?

A. I do not recollect her Position or Distance at those Times. I think the *Victory* was about Four Points upon my Lee-bow at Seven o'Clock, and might be about Three Miles distant from me.

Q. Was you astern of the *Formidable* when you bore away?

A. I was a little Way astern of her, upon her Lee-quarter withal.

Q. Did you see the *Fox* go from the *Victory* to the Vice-Admiral of the Blue?

A. No, I do not recollect seeing her.

Q. Did you see Pendants thrown out on board the *Victory* for particular Ships of the Blue Division to bear down, and at what Time?

A. Yes, about Seven o'Clock.

Q. Did you see those Signals repeated on board the *Formidable*?

A. No.

Q. What general Signals were at that Time flying on board the *Victory*?

A. The Signal for the Line of Battle ahead, and the Signal for Ships to bear down into the Admiral's Wake.

Q. Were those Signals repeated on board the *Formidable*?

A. I remember seeing the blue Flag at the Mizzen-peak, but I do not remember seeing the Signal for the Line repeated.

Q. What was your Station in the Line of Battle on the Starboard Tack?

A. The next Ship astern of the *Formidable*.

Q. When you quitted the *Formidable's* Wake to go into the *Victory's*, what Course did you steer, and what Distance did you run?

A. I do not recollect the Course I steered, but I bore right down to Leeward;—I do not recollect the Distance.

Q. At what Time did you get into the *Victory's* Wake?

A. I do not recollect the Time, nor how long I was in bearing down.

Q. Was the Weather such, as to admit of Boats passing and repassing?

A. Yes, I think it was, the whole Evening.

Q. Were you ever within Hail of the *Formidable* in the Afternoon?

A. No.

Q. If the Vice-Admiral of the Blue had been in his Station at the Time you got into it, was there sufficient Day-light for renewing the Action?

A. I think if the Line had been formed at the Time I got into it, there was sufficient Time to have begun the Action.

Q. Can you assign any Reason why the Action was not renewed in the Afternoon?

A. No.

Q. Was the Sail the *Victory* carried such as to prevent the Vice-Admiral of the Blue forming in the Line from Five o'Clock till Dark?

A. I think not:—I speak only as to Appearances; I can be no Judge as to the Ability of the Vice-Admiral of the Blue to come down.

Q. After you got into your Station, was the Sail the *Victory* carried such as that you could easily keep your Station?

A. Yes.

Q. Did you see the *Formidable* in her Station at any Time in the Evening of the 27th?

A. No.

Q. Did you see distinguishing Lights on board the *Victory* in the Night of the 27th of July?

A. I did, till Ten o'Clock.

Q. Did you see distinguishing Lights on board the *Queen* that Night?

A. No.

Q. Did you see distinguishing Lights on board the *Formidable* that Night?

A. No.

Q. What was the Position of the *Formidable*, when you first saw her in the Morning of the 28th of July?

A. Upon the *Ocean's* Weather-bow, but I do not exactly recollect the Distance; it might be a Mile at Day-break.

Q. What was the Position and Distance of the *Ocean*, with respect to the *Victory*, at that Time?

A. The *Victory* was pretty broad upon the *Ocean's* Lee-bow; I do not recollect the Distance.

Q. Was it more or less than a Mile?

A. I do not recollect the Distance; I have scarce any Recollection of Distance. I remember her being upon our Lee-bow, because in the Night we fell so much upon the *French* Line, that I was obliged to haul my Main Tack on board; I was a good deal to Windward of her in the Morning;—more than I ought to have been in the Line; it grew thick and hazy in the Night: I did not see her after Ten o'Clock.

Q. Did any Ships intervene between the *Victory* and you?

A. There must have been Ships between us, but I do not recollect them.

Q. Do you recollect what Ships were nearest to you at that Time?

A. I do not recollect one Ship but the Vice-Admiral of the Blue.

Q. Did you see the Vice-Admiral of the Red at that Time?

A. No—I do not remember seeing him.

Q. Did you see the *Victory* come out of Action?

A. No.

Q. What was the Position of the headmost Ship of the *French* Fleet when you bore down and took your Station in the Line?

A. I placed myself in the Line at that Distance from the *Victory*, which I thought would give Room for the Ships stationed ahead of me to place themselves in; and I think, about that Time, there might be one or two of the *French* Line got past me before my Beam.

Q. At what Distance were those Ships from you?

A. A little without random Shot.

Q. If the *Formidable* had bore down when you did, do you think she could have got into her Station in the Line?

A. I saw no Impediment to it, but what I have before mentioned,—that of her Foretopfail being unbent.

Prisoner asked,

Q. Did you take Notice of the *Formidable* during the Action, or make any Observations upon her?

A. I made no Observations upon the *Formidable*.

able during the Action, but that of her having her Mizentopfail aback.

Q. What occurred to you upon that Fact?

A. It occurred to me that it was kept aback in order to have more Time to engage the *French* as they passed.

Q. Do you mean to say, in order to pass the slower?

A. I do.

Q. When you came out of Action, which you said was near the *Formidable*, did you take Notice of the Motions of the *Formidable* after the Firing ceased?

A. There was a great deal of Smoke astern of me, occasioned by Ships being engaged some Time after I came out of the Action; and my Attention was so much taken up in keeping clear of Ships that were ahead of me, and in getting my Ship in Order to come into my Station again, that I did not make any Observations upon the *Formidable* afterwards.

Q. Whilst you were standing on the Starboard Tack, and meeting the *Victory* on the Larboard Tack, did you see the Signal for the Line on board the *Victory* till you passed her?

A. I saw the Signal for the Line on board the *Victory*; I think it was at the Time she passed me, and not before.

Q. When you bore down in the Evening into the *Victory's* Wake, did not you form astern of the *Vengeance*, and some other Ships you found there before you?

A. I formed ahead of the *Vengeance*, and astern of two or three Ships, I do not recollect which, that were close to the *Victory* in their Stations.

Withdrew.

The Court adjourned, it being Three Quarters past Three, till To-morrow Morning at Nine o'Clock.

TENTH DAY.

THURSDAY, the 22d of APRIL, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

Honourable Captain George Berkeley, late Fifth Lieutenant of the Victory, sworn.

Q. Did you know any Thing of the *Fox* being called to the *Victory* in the Afternoon of the 27th July, and at what Time?

A. No, I did not know she was called to the *Victory*; but I saw her after she was standing from her to the *Formidable*, and I was told that she was gone with a Message: It was very near Five; it was past one Bell, the Quarter-master told me.

Q. Did you observe her join the *Formidable*, and at what Time?

A. I did not observe her join the *Formidable*; I saw her very near, about Half an Hour after, which Time I staid upon Deck.

Q. Was she upon the same Tack with the *Formidable*, at the Time you now speak of?

A. No; she had the *Formidable* open to Windward of her.

Q. Did you see the *Formidable* before the Close of the Evening of the 27th, and what was her Position with respect to the *Victory* at that Time?

A. I saw her at different Times. Towards the Close of the Evening, she was with her Head the same Way, or nearly, right to Windward of us, upon our Beam, or rather abaft it; and, I should imagine, about Two and an Half or Three Miles Distance.

Q. What Watch had you in the Night after the Action?

A. The middle Watch.

Q. What Sail had the *Victory* out during the Time of your Watch, and at what Rate did she go?

A. She had treble-reefed Fore and Main Top-sails and Forefail. I am not clear whether her Mizen-stayfail was set or not.

Q. Did she keep her Wind?

A. She carried her Helm a-lee almost the whole Watch; she went at the Rate of one Knot and an Half, and I ordered the Mate to put down Two Knots, because she altered her Helm.

Q. At the Time you last saw the *Formidable* in the Evening of the 27th of July, how did the headmost Ship of the Enemy then bear with respect to the *Victory*?

A. As nearly as I can remember, when I looked last at the *French* Fleet before the Close of Day, the Fifth or Sixth Ship I reckoned to be abreast of the *Victory*. I cannot judge of the headmost.

Q. Did you see the *Formidable* at Day-break on the 28th of July, and what were her Position and Distance with respect to the *Victory* at that Time?

A. I did not see the *Formidable* myself, for I was busy in making Signals.

Q. Did you see the *Queen* at Day-break in the Morning of the 28th?

A. No, I did not.

Q. Did the *Victory* carry her distinguishing Lights during your Watch?

A. Yes, she did; and an additional one at the Bow-sprit-end.

Q. Was the Fleet in general in a Line at Day-break on the 28th of July, or irregular?

A. As many of them as were formed, appeared as well connected as they could be after the Night.

Q. Are we from that to conclude, that some, or many of them, were irregular?

A. There were some Ships ahead upon our Starboard-bow, which seemed not to be in the Line; but what Ships they were, I cannot say.

Q. What Kind of Weather had you during your Watch?

A. Much the same Weather that we had had before;—thick at Times, and at Times it cleared up, that I could see the Lights that were pointed out to me as the *French* Lights.

Prisoner's Questions:

Q. In what Part of the *Victory* were you standing when you saw the *Fox* go towards the *Formidable*?

A. After I had seen my Quarters ready for Action again, I came upon the Quarter-deck, when one of

of the Lieutenants took me by the Arm, and carried me to Windward, saying, "There is the *Fox* gone with a trimming Message to the Vice-Admiral of the Blue."—I got upon the foremost Gun upon the Quarter-deck to look over the Barricado; which Conversation occasioned me to ask what o'Clock it was.

Q. Did you get upon the Gun to look over the Barricado to get a Sight of the *Fox*?

A. Yes; we were barricaded so high, there was no seeing her without.

Q. Did the *Fox* pass to Windward or to Leeward of the Ships that were formed astern of the *Victory* at that Time?

A. I cannot say.

Q. Do you know how many Ships were formed astern at that Time?

A. I cannot speak to that, from my own Knowledge.

Q. What was the Station of the *Arctusa*, the Repeating Frigate, at that Time?

A. I do not know; for I did not see her at that Time, that I recollect.

Q. Did you never see the Repeating Frigate to Windward of you that Afternoon?

A. I recollect seeing her that Afternoon; but at that particular Time when the *Fox* went to you, I cannot charge my Memory with seeing her.

Q. When you did see her, was she upon your Weather-beam, in her Station, about Three Miles to Windward, or how?

A. To the best of my Recollection, I believe she was rather before the Beam.

Q. Then, if the *Formidable*, as you describe, was near to you upon your Beam, must she not have been near to the *Arctusa*?

A. I should imagine she could not have been very far off.

*Discharged from further Attendance.
Withdrew.*

John Madgison, Master of the *Victory*,
sworn.

Q. Is this your Log-book, containing the Remarks made on board the *Victory* on the 27th and 28th of July, without Alteration or Addition since made?

A. It is, except noting the Time when we wore Ship at Three o'Clock in the Afternoon of the 27th of July, which, upon overhauling it, I saw I had omitted.

Q. What were the different Times the *Victory* was wore in the Afternoon of the 27th of July?

The Witness refers to his Log-book.

A. At Half past One made the Signal, and wore from the Starboard to the Larboard Tack.

Q. Did you see the *Formidable* at that Time?

A. I saw her Flag at that Time through the Smoke.

Q. At what Distance was she then from you?

A. I believe a Mile and an Half, or near Two Miles.

Q. How was the *Formidable's* Head at that Time?

A. Upon the Starboard Tack.

Q. Did you ever see the *Formidable* upon the Larboard Tack after the Action?

A. No.

Q. At what Times did the *Victory* afterwards wear?

A. At Three o'Clock we wore from the Larboard to the Starboard Tack.

Q. Just before you wore to the Starboard Tack

close upon a Wind, did you see the *Formidable* at that Time, at what Distance was she, and how did she bear with respect to the *Victory*?

A. The *Victory* was not close upon a Wind after wearing: We steered to join the Ships in the S. S. E. of us, about Two Points from the Wind. I did not then see the *Formidable*.

Q. Did you see the *Formidable* when she passed the *Victory* before you wore the second Time?

A. I did.

Q. How long was that before you wore the second Time?

A. I do not recollect at what Time in particular; but it was between Two o'Clock and a Quarter after, that I recollect seeing her pass under our Lee.

Q. What was the Position of the *Formidable* at that Time?

A. She was then standing to the Southward on the Starboard Tack.

Q. At what Time did the *Victory* haul her Wind close upon the Starboard Tack?

A. About a Quarter after Seven.

Q. Did not she haul her Wind close before that Time?

A. I believe not.

Q. Did not you alter your Course more westerly about Five o'Clock?

A. The Ship had very little Head-way; she might alter her Course upon just coming up and falling off.

Q. After the *Victory* wore to the Southward, what Sail did she carry, and how many Knots did she go, while she edged away from the Wind?

Refers to the Log.

A. She was under double-reefed Topsails and Foresail; I do not recollect any Stay-sails; and she went Two Knots an Hour; for in wearing we bent a new Maintop-sail.

Q. Did you observe that you increased your Distance from the *Formidable* while you edged away to the Southward?

A. During that Time, I had not seen the *Formidable*, after wearing on the Starboard Tack.

Q. How soon after did you see her to take notice of her?

A. Between Four and Five o'Clock.

Q. What were her Position and Distance with respect to the *Victory* at that Time?

A. She was on the *Victory's* Starboard-quarter about Three Points, and near Three Miles distant.

Q. At what Time did the *Victory* join those Ships she edged away for?

A. We drew near those Ships in the S. E. between Five and Six o'Clock.

Q. Did the *Victory*, after that, continue edging away, or did she haul her Wind?

A. I believe I have before said, she did not haul her Wind till about a Quarter after Seven o'Clock.

Q. After you had hauled your Wind at a Quarter after Seven, did you keep close to the Wind that Night?

A. We did.

Q. Was you upon Deck at the Close of the Evening after the Action?

A. I was.

Q. Did you then see the *Formidable*, and what were her Position and Distance with respect to the *Victory* at that Time?

A. Between Seven and Eight, I saw the *Formidable*: Her Distance was nearly the same as before; but she was more towards the Beam, Four or Five Points upon the Quarter.

Q. What Sail was the *Formidable* under at the different Times you saw her?

A. Between

A. Between Five and Six, she was under Main and Mizzen Topsails and Forefail; she bent her Foretopfail between Seven and Eight, and hauled one Clew of the Maintopfail up:—The Foretopfail was sheeted home, but not hoisted.

Q. Was the Mainfail set?

A. It appeared to me setting, if not set, between Seven and Eight o'Clock.

Q. Did you make those Observations with a Glass, or with your naked Eye?

A. The Mainfail with my naked Eye;—the Foretopfail I recollect seeing clewed up through the Glass.

Q. Did you observe whether she had any Stay-fails set?

A. I did not.

Q. At the two different Periods you took notice of her, did it appear to you that she was going from the Wind, or close-hauled?

A. She appeared to me to be close-hauled.

Q. Was the *Victory's* Log hove during the Afternoon, to your Knowledge, after being on the Starboard Tack?

A. I do not recollect it was, or was not.

Q. Do you think the Log was marked upon Calculation by the Officer of the Watch, or by heaving the Log regularly?

A. I cannot tell.

Q. What Sort of Weather had you that Afternoon, from the Time you wore to the Southward?

A. Very squally, uncertain Weather, but did not blow hard.

Q. Were you upon Deck at Break of Day in the Morning of the 28th of July?

A. I was on Deck at Four o'Clock.

Q. Did you then see the *Formidable*?

A. I did not; and did not look for her, being busy fishing the Masts, and in other Duties on board the *Victory*.

Q. How did it appear to you the headmost of the *French* Fleet bore in the Evening of the 27th of July with respect to the *Victory*?

A. The Third Ship from the Van of the *French* Fleet was a little abaft the *Victory's* Beam, at about Two Miles Distance.

Q. Did the *French* Fleet appear in Line of Battle at that Time?

A. They were in a Line.

Q. In what Position did the *British* Fleet appear to you at that Period?

A. The Ships in the Van were very nearly formed at near Eight o'Clock;—three Ships, Part of the Center Division, astern of the *Victory*, were formed;—a fourth was at a greater Distance, and appeared to me about a Point upon the sternmost of our Ships Starboard-quarter.—A Number of the Rear Division were then upon our Starboard-quarter, and astern withal, but not in our Wake.

Q. What Sail was the *Victory* under when you came upon Deck in the Morning, and was she then to the Wind?

A. Under treble-reefed Topsails and Forefail, close by the Wind; the Mizentopfail setting.

Prisoner's Questions:

Q. When was the Addition made to the Log-book, in noting the Time of her wearing?

A. Before Mr. *Keppel's* Court Martial began.

Q. How long before that?

A. After I heard Mr. *Keppel* was to be tried: In conning my Remarks over for the Day, I found I had made that Omission in taking the Log off from the Board.

Q. Are the Courses and Rates of sailing regularly marked in the Log-book?

6

A. They are in my Log-book, as I took them from the Board, and a Slate I kept for that Purpose on the Quarter-deck.

Q. Did the *Victory* lay-to any Part of the Afternoon of the 27th July?

A. I do not recollect she did; but I marked her Courses as laying-to, not being able to give a true Account for her Steerage.

Q. Does it appear by your Log-book, that the *Victory* was laying-to from One to Five o'Clock?

A. It appears so by the Log-book.

Q. Why could not you account for the Courses and Rates of sailing during that Time, as well as the preceding and following Hours?

A. Because we could not get our Sails properly trimmed, from the Damages we had received in the Action. We never had them all full at once, for some were shaking, and she had very little Headway.

Q. What was the Situation of the Ships of the Center Division ahead of the *Victory* at Eight o'Clock?

A. I did not take any particular Notice of what Ships there were; there were some Ships formed ahead of the *Victory*.

Q. Do you know that some of them were out of their Stations?

A. I do not know of any particular Ships; there were some not quite in their Stations, but I do not know their Names.

Q. Was the Business of the Log carried regularly through, or lumped, as is generally the Case?

A. The laying-to was lumped by me, not knowing how to account for her Course; there was nothing marked upon the Board.

Withdrew.

Captain George Stoney, late Second Lieutenant of the Victory, sworn.

Q. Did you know any Thing of the *Fox* being called to the *Victory* in the Afternoon of the 27th July, and at what Time?

A. Being quartered on the Lower-deck, I cannot speak positively as to Time; I recollect the *Fox's* being called.

Q. Did you see her go to the *Formidable*, and at what Time?

A. I observed before, that I could not speak to Time, but I saw her wear: I was then on the Quarter-deck, making a Report to Captain *Faulkner* of some Service I had been on below: She wore close under the *Victory's* Lee-quarter, hauled her Tacks on board, set her Stay-fails and Topgallant-fails, and trimmed close by the Wind, but did not appear to me to lay up, as if she could fetch the Vice-Admiral.

Q. Did you observe whether she weathered the Ships astern of the *Victory*?

A. She did not weather any Ship that was then in our Wake.

Q. What Number of Ships were then in the *Victory's* Wake?

A. To the best of my Recollection, Three; the *Foudroyant*, *Prince George*, and *Bienfaisant*.

Q. Was the *Victory* close-hauled upon a Wind at that Time?

A. I think she was.

Q. Did you see the *Formidable* before the Close of the Evening of the 27th July, and what was her Position with respect to the *Victory* at that Time?

A. She was so broad upon the *Victory's* Weather-

ther-quarter, that I could not possibly see her out of the *Victory's* Weather-sterport, though I looked frequently for the Purpose.

Q. What Watch had you in the Night of the 27th July?

A. The first.

Q. What were the Position and Distance of the *Formidable* with respect to the *Victory* the latest Time you saw her that Evening?

A. About two Points abaft the Weather-beam; I fancy about three Miles, but Distances are very erroneous.

Q. What Sail had the *Victory* out during the Time of your Watch, and at what Rate did she then go?

A. Forefail, treble-reefed Fore and Maintop-fails; the Mizentopfail was furled, and, I think, the Mizentopfail was set; at about Seven Bells, the Mizenmast being fished and woolded, the Mizensheet was hauled aft, the Ship not before steering for want of After-fail:—She went about two Knots, or two Knots and an Half, which was the most the Mate reported to me she went during my Watch.

Q. Did you regulate the marking of the Log-board during your Watch?

A. Most undoubtedly.

Q. In the Course of the Day before, had you done so, any Time when it was your Watch?

A. I was at my Quarters from Eight in the Morning, all that Day; but I always did so in my Watch.

Q. At the Time you last saw the *Formidable* in the Evening of the 27th July, how did the headmost Ship of the Enemy then bear with respect to the *Victory*, or at the Clofe of the Evening, when you last saw them?

A. I should suppose the headmost Ship must be nearly abreast the Center of the Van Division; but from their forming under our Lee in the Evening, I should suppose they must have got that Length from the Time I last saw the *Formidable*; I should suppose they must be between two and three Miles to Leeward.

Q. Did you see the *Formidable* in Action, or soon after she came out of Action?

A. I saw her in Action.

Q. When was the first Time you saw her afterwards?

A. I thought it my Duty to turn the Ordinary and Marines to the Pump, to counteract any Damages our Ship might have received, and sent up the Seamen to assist in refitting the Rigging, so that I did not take Notice of her.

Q. When you saw her in Action, how long had the *Victory* been out of Action?

A. A very short Time.

Q. Did you see the *Formidable* upon the Lar-board Tack?

A. Never, after the Action.

The Witness was discharged from further Attendance.

Withdrew.

Honourable Thomas Lumley, Lieutenant of the Robuste, sworn.

Q. Was the *Robuste*, at any Time in the Afternoon of the 27th July, within Hail of the *Formidable*?

A. Not within my Recollection.

Q. At what Time was the *Robuste* refitted after the Action, and at what Time in the Afternoon did she take her Station in the Line?

A. I cannot speak exactly as to the Time of

her going down into her Station, but it was near Sunset, and she was not then perfectly refitted.

Q. How long was the *Robuste* in running down into her Station, and how much from the Wind did she go?

A. I cannot charge my Memory as to that.

Q. Before you bore away to run into your Station, at what Distance was you from the *Formidable*?

A. I did not see the *Formidable*: I took no Notice of her in the Course of the whole Afternoon.

Q. Did you see distinguishing Lights on board the *Formidable* in the Night of the 27th July?

A. I was only upon Deck one Hour in the Course of the Night: I saw no Lights on board that Ship, which the Officer whom I relieved pointed out to me to be the *Formidable*.

Q. Did it afterwards appear to you that the Ship which had been pointed out to you, was the *Formidable*?

A. I did not observe:—The First Lieutenant who came upon Deck at Day-light went aft upon the Poop to look; I staid upon the Quarter-deck: The Ship was astern.

Q. What Ship was near you at that Time?

A. The *Queen* was on our Lee-bow, within Hail.

Q. Do you recollect the Names of any other Ships that were near you to Leeward?

A. I do not recollect.

Q. What Distance do you imagine the Ship was from you, which was pointed out to you to be the *Formidable*?

A. I cannot speak certainly as to the Distance, but I suppose a Quarter of a Mile, or something more.

Q. What was the Position of the *Robuste* with respect to the *Victory* at Day-break?

A. I cannot answer to that, as I remained on the Quarter-deck, and the *Robuste* being got into the Van of the Fleet, I only supposed the *Victory* to have been somewhere astern.

Q. Did you see distinguishing Lights on board the *Victory* any Part of that Night?

A. In the Course of the one Hour I was upon Deck, I took no Notice of any Ship but the Vice-Admiral of the Red on the Lee-bow, and the Ship pointed out to me as the *Formidable* astern.

Q. Did you see any distinguishing Lights on board the *Queen*?

A. I saw distinguishing Lights, but I did not particularly notice how many.

Prisoner's Questions:

Q. What Hour was it you were upon Deck?

A. From Three to Four o'Clock.

Q. You have said the Ship pointed out to you for the *Formidable* was astern; was it possible for you to see distinguishing Lights on board that Ship, if there had been any?

A. Certainly not, supposing those distinguishing Lights in the usual Part of the Ship.

The Witness was discharged from further Attendance.

Withdrew.

Captain Bazely was next called, upon which the Prisoner addressed the Court as follows:

"As Captain Bazely is one of the principal Witnesses summoned to support my Defence, and was summoned by me before he was summoned for the Prosecution, I submit to the Court whether there is any Objection to postponing his Examination:—When he is called upon by me, the Court will then have an Opportunity of cross-examining him, and consequently of asking every Question."

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A. Between Five and Six, she was under Main and Mizzen Topsails and Forefail; she bent her Foretopfail between Seven and Eight, and hauled one Clew of the Maintopfail up:—The Foretopfail was sheeted home, but not hoisted.

Q. Was the Mainfail set?

A. It appeared to me setting, if not set, between Seven and Eight o'Clock.

Q. Did you make those Observations with a Glass, or with your naked Eye?

A. The Mainfail with my naked Eye;—the Foretopfail I recollect seeing clewed up through the Glass.

Q. Did you observe whether she had any Stay-fails set?

A. I did not.

Q. At the two different Periods you took notice of her, did it appear to you that she was going from the Wind, or close-hauled?

A. She appeared to me to be close-hauled.

Q. Was the *Victory's* Log hove during the Afternoon, to your Knowledge, after being on the Starboard Tack?

A. I do not recollect it was, or was not.

Q. Do you think the Log was marked upon Calculation by the Officer of the Watch, or by heaving the Log regularly?

A. I cannot tell.

Q. What Sort of Weather had you that Afternoon, from the Time you wore to the Southward?

A. Very squally, uncertain Weather, but did not blow hard.

Q. Were you upon Deck at Break of Day in the Morning of the 28th of July?

A. I was on Deck at Four o'Clock.

Q. Did you then see the *Formidable*?

A. I did not; and did not look for her, being busy fishing the Masts, and in other Duties on board the *Victory*.

Q. How did it appear to you the headmost of the *French* Fleet bore in the Evening of the 27th of July with respect to the *Victory*?

A. The Third Ship from the Van of the *French* Fleet was a little abaft the *Victory's* Beam, at about Two Miles Distance.

Q. Did the *French* Fleet appear in Line of Battle at that Time?

A. They were in a Line.

Q. In what Position did the *British* Fleet appear to you at that Period?

A. The Ships in the Van were very nearly formed at near Eight o'Clock;—three Ships, Part of the Center Division, astern of the *Victory*, were formed;—a fourth was at a greater Distance, and appeared to me about a Point upon the sternmost of our Ships Starboard-quarter.—A Number of the Rear Division were then upon our Starboard-quarter, and astern withal, but not in our Wake.

Q. What Sail was the *Victory* under when you came upon Deck in the Morning, and was she then to the Wind?

A. Under treble-reefed Topsails and Forefail, close by the Wind; the Mizentopfail setting.

Prisoner's Questions:

Q. When was the Addition made to the Log-book, in noting the Time of her wearing?

A. Before Mr. *Keppel's* Court Martial began.

Q. How long before that?

A. After I heard Mr. *Keppel* was to be tried: In conning my Remarks over for the Day, I found I had made that Omission in taking the Log off from the Board.

Q. Are the Courses and Rates of sailing regularly marked in the Log-book?

6

A. They are in my Log-book, as I took them from the Board, and a Slate I kept for that Purpose on the Quarter-deck.

Q. Did the *Victory* lay-to any Part of the Afternoon of the 27th July?

A. I do not recollect she did; but I marked her Courses as laying-to, not being able to give a true Account for her Steerage.

Q. Does it appear by your Log-book, that the *Victory* was laying-to from One to Five o'Clock?

A. It appears so by the Log-book.

Q. Why could not you account for the Courses and Rates of sailing during that Time, as well as the preceding and following Hours?

A. Because we could not get our Sails properly trimmed, from the Damages we had received in the Action. We never had them all full at once, for some were shaking, and she had very little Headway.

Q. What was the Situation of the Ships of the Center Division ahead of the *Victory* at Eight o'Clock?

A. I did not take any particular Notice of what Ships there were; there were some Ships formed ahead of the *Victory*.

Q. Do you know that some of them were out of their Stations?

A. I do not know of any particular Ships; there were some not quite in their Stations, but I do not know their Names.

Q. Was the Business of the Log carried regularly through, or lumped, as is generally the Case?

A. The laying-to was lumped by me, not knowing how to account for her Course; there was nothing marked upon the Board.

Withdrew.

Captain George Stoney, late Second Lieutenant of the Victory, sworn.

Q. Did you know any Thing of the *Fox* being called to the *Victory* in the Afternoon of the 27th July, and at what Time?

A. Being quartered on the Lower-deck, I cannot speak positively as to Time; I recollect the *Fox's* being called.

Q. Did you see her go to the *Formidable*, and at what Time?

A. I observed before, that I could not speak to Time, but I saw her wear: I was then on the Quarter-deck, making a Report to Captain *Faulkner* of some Service I had been on below: She wore close under the *Victory's* Lee-quarter, hauled her Tacks on board, set her Stayails and Topgallantails, and trimmed close by the Wind, but did not appear to me to lay up, as if she could fetch the Vice-Admiral.

Q. Did you observe whether she weathered the Ships astern of the *Victory*?

A. She did not weather any Ship that was then in our Wake.

Q. What Number of Ships were then in the *Victory's* Wake?

A. To the best of my Recollection, Three; the *Foudroyant*, *Prince George*, and *Bienfaisant*.

Q. Was the *Victory* close-hauled upon a Wind at that Time?

A. I think she was.

Q. Did you see the *Formidable* before the Close of the Evening of the 27th July, and what was her Position with respect to the *Victory* at that Time?

A. She was so broad upon the *Victory's* Weather-

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ther-quarter, that I could not possibly see her out of the *Victory's* Weather-stermport, though I looked frequently for the Purpose.

Q. What Watch had you in the Night of the 27th July?

A. The first.

Q. What were the Position and Distance of the *Formidable* with respect to the *Victory* the latest Time you saw her that Evening?

A. About two Points abaft the Weather-beam; I fancy about three Miles, but Distances are very erroneous.

Q. What Sail had the *Victory* out during the Time of your Watch, and at what Rate did she then go?

A. Forefail, treble-reefed Fore and Maintop-sails; the Mizentop-sail was furled, and, I think, the Mizentay-sail was set; at about Seven Bells, the Mizenmast being fished and woolded, the Mizensheet was hauled aft, the Ship not before steering for want of After-sail:—She went about two Knots, or two Knots and an Half, which was the most the Mate reported to me she went during my Watch.

Q. Did you regulate the marking of the Log-board during your Watch?

A. Most undoubtedly.

Q. In the Course of the Day before, had you done so, any Time when it was your Watch?

A. I was at my Quarters from Eight in the Morning, all that Day; but I always did so in my Watch.

Q. At the Time you last saw the *Formidable* in the Evening of the 27th July, how did the headmost Ship of the Enemy then bear with respect to the *Victory*, or at the Close of the Evening, when you last saw them?

A. I should suppose the headmost Ship must be nearly abreast the Center of the Van Division; but from their forming under our Lee in the Evening, I should suppose they must have got that Length from the Time I last saw the *Formidable*; I should suppose they must be between two and three Miles to Leeward.

Q. Did you see the *Formidable* in Action, or soon after she came out of Action?

A. I saw her in Action.

Q. When was the first Time you saw her afterwards?

A. I thought it my Duty to turn the Ordinary and Marines to the Pump, to counteract any Damages our Ship might have received, and sent up the Seamen to assist in refitting the Rigging, so that I did not take Notice of her.

Q. When you saw her in Action, how long had the *Victory* been out of Action?

A. A very short Time.

Q. Did you see the *Formidable* upon the Lar-board Tack?

A. Never, after the Action.

The Witness was discharged from further Attendance.

Withdrew.

Honourable Thomas Lumley, Lieutenant of the Robuste, sworn.

Q. Was the *Robuste*, at any Time in the Afternoon of the 27th July, within Hail of the *Formidable*?

A. Not within my Recollection.

Q. At what Time was the *Robuste* refitted after the Action, and at what Time in the Afternoon did she take her Station in the Line?

A. I cannot speak exactly as to the Time of

her going down into her Station, but it was near Sunset, and she was not then perfectly refitted.

Q. How long was the *Robuste* in running down into her Station, and how much from the Wind did she go?

A. I cannot charge my Memory as to that.

Q. Before you bore away to run into your Station, at what Distance was you from the *Formidable*?

A. I did not see the *Formidable*: I took no Notice of her in the Course of the whole Afternoon.

Q. Did you see distinguishing Lights on board the *Formidable* in the Night of the 27th July?

A. I was only upon Deck one Hour in the Course of the Night: I saw no Lights on board that Ship, which the Officer whom I relieved pointed out to me to be the *Formidable*.

Q. Did it afterwards appear to you that the Ship which had been pointed out to you, was the *Formidable*?

A. I did not observe:—The First Lieutenant who came upon Deck at Day-light went aft upon the Poop to look; I staid upon the Quarter-deck: The Ship was astern.

Q. What Ship was near you at that Time?

A. The *Queen* was on our Lee-bow, within Hail.

Q. Do you recollect the Names of any other Ships that were near you to Leeward?

A. I do not recollect.

Q. What Distance do you imagine the Ship was from you, which was pointed out to you to be the *Formidable*?

A. I cannot speak certainly as to the Distance, but I suppose a Quarter of a Mile, or something more.

Q. What was the Position of the *Robuste* with respect to the *Victory* at Day-break?

A. I cannot answer to that, as I remained on the Quarter-deck, and the *Robuste* being got into the Van of the Fleet, I only supposed the *Victory* to have been somewhere astern.

Q. Did you see distinguishing Lights on board the *Victory* any Part of that Night?

A. In the Course of the one Hour I was upon Deck, I took no Notice of any Ship but the Vice-Admiral of the Red on the Lee-bow, and the Ship pointed out to me as the *Formidable* astern.

Q. Did you see any distinguishing Lights on board the *Queen*?

A. I saw distinguishing Lights, but I did not particularly notice how many.

Prisoner's Questions:

Q. What Hour was it you were upon Deck?

A. From Three to Four o'Clock.

Q. You have said the Ship pointed out to you for the *Formidable* was astern; was it possible for you to see distinguishing Lights on board that Ship, if there had been any?

A. Certainly not, supposing those distinguishing Lights in the usual Part of the Ship.

The Witness was discharged from further Attendance.

Withdrew.

Captain Bazely was next called, upon which the Prisoner addressed the Court as follows:

"As Captain Bazely is one of the principal Witnesses summoned to support my Defence, and was summoned by me before he was summoned for the Prosecution, I submit to the Court whether there is any Objection to postponing his Examination:—When he is called upon by me, the Court will then have an Opportunity of cross-examining him, and consequently of asking every

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Question

Question which they may deem necessary, in the same Manner as if he gave his Evidence before I enter upon my Defence."

The Court was cleared, and after some Time the Prisoner was again brought in, and Audience admitted, when the Judge-Advocate delivered the Resolution of the Court as follows:

The Court do not think that they can dispense with examining Captain Bazely in Support of the Prosecution.

Captain John Bazely sworn.

Q. Relate to the Court the Situation of the Blue Division early in the Morning of the 27th of July, relative to the Center Division.

A. Upon the *Victory's* Lee-bow, and ahead withal; I judge the Distance of the *Formidable* to be less than a Mile to Leeward, and a Mile ahead withal.

Q. Give an Account of the Proceedings of the Vice-Admiral of the Blue from that Period till the *Formidable* came into Action, and till the Firing ceased.

A. The Fleet was standing on the Larboard Tack, and we stood on that Tack till Ten o'Clock, and then the Fleet tacked all together by general Signal; and after we were about upon the Starboard Tack, the Firing began in the Van of the *British* Fleet with that of the Enemy about Eleven o'Clock, and the *Formidable* first opened her Fire at about Twelve, as near as I can recollect, and began One or Two Ships ahead of the *French* Center, within Musquet shot, and passed many of the Enemy within Pistol-shot, and continued in the Action going along the *French* Line, as near as I can recollect, One Hour and Forty Minutes.

Q. How many Ships did you receive the Fire from as you went along?

A. I do not know how many; I did not count them as we went along: From the Time we opened our Fire, we continued it till we had passed the whole *French* Line: I should conceive we were close in Action with about Fourteen Sail; we received the Fire of about Nine Ships before we began our Fire.

Q. What was the Vice-Admiral of the Blue's Behaviour during the Time of Action?

A. Very gallant and spirited.

Q. What was the Condition of the *Formidable* after she came out of Action?

A. A perfect Wreck, except that of her Masts and Yards coming over the Side.

Q. How was the *English* Fleet then situated with regard to the *Formidable*, and what were the Ships then nearest to her?

A. After the *Formidable* had passed the Enemy's Rear, the first Ships that I observed were the Vice-Admiral of the Red and his Division, standing upon the Larboard Tack, to Windward of us, and the *Victory* with the Ships near her directly ahead of the *Formidable*. The Vice-Admiral of the Red was about One Mile ahead, and to Windward of the *Formidable*, when we came out of Action, and the *Victory*, with the Ships with her, I judged to be about Two Miles.

Q. How soon after the *Formidable* came out of Action, did she wear?

A. Immediately after, she wore to the Larboard Tack.

Q. What was the Situation of the *French* Fleet, while the *Formidable* was on the Larboard Tack, with her Head towards them?

A. The *French* Rear appeared to me to be in

Disorder, and soon after we had got round, Three of the Enemy's Fleet began to wear to come upon the other Tack immediately to meet the *Formidable*.

Q. Did you see the Signal for the Line on board the *Victory* or the repeating Frigate, while the *Formidable* was on the Larboard Tack?

A. No, I did not.

Q. How soon after did she wear to the Starboard Tack?

A. About Half an Hour after we were got round on the Larboard Tack.

Q. Did the *Formidable* and *Victory* pass each other on different Tacks?

A. They did meet, and pass each other.

Q. What did it appear to you was the Reason for the Vice-Admiral of the Blue wearing to the Larboard Tack, and laying his Head to the Enemy again?

A. To be ready to renew the Engagement when the Admiral should come up with the Ships with him.

Q. What did it appear to you was the Vice-Admiral of the Blue's Reason for wearing back again, Half an Hour after, to the Starboard Tack?

A. The Signal for Battle being hauled down, and the Vice-Admiral of the Red, and the Ships with him to Windward, having shortened Sail, and no Ships near us; in the disabled State the *Formidable* was, the Vice-Admiral of the Blue thought it necessary to wear back to meet the Fleet, to avoid any Danger we might be exposed to by the Enemy's pointing to us.

Q. At what Time did you perceive the Signal for Battle hauled down on board the *Victory*?

A. I did not see it on board the *Victory*, but saw it hauled down on board the Vice-Admiral of the Red, who had repeated the Signal for Battle. I cannot speak as to Time, but it was before we wore to avoid the Enemy, who were pointing to us.

Q. When was the first Time you saw the Signal for the Line, while on the Starboard Tack?

A. Not till we were near abreast of the *Victory*, when we met and passed each other.

Q. Was that Signal repeated on board the *Formidable*?

A. It was repeated soon after the *Victory* wore under the *Formidable's* Stern, and passed her again to Leeward.

Q. How soon did the *Victory* wear after the *Formidable* had passed her?

A. Immediately after passing her.

Q. When the *Victory* passed you on the Starboard Tack, was the Signal for the Line continued flying on board her?

A. Yes,—I think it was.

Q. Did the *Formidable* obey it?

A. At the Time with respect to which you ask the Question, we were so very little a Distance from the *Victory*, that I apprehended, from her going immediately large, that we were in a Line with her. After she had passed us, she appeared to me to go away Two Points from the Wind, put us in her Wake, and we were immediately near her, and no Ship between us.

Q. What Sail was the *Victory* then under?

A. Topsails and Foresail, to the best that I can recollect;—the Maintop sail just bending when she passed us:—I cannot recollect whether they were reefed or not. The Fore and Mizentop sails were hoisted, and the Foresail set; but whether they were reefed or not, I do not recollect.

Q. Did the Sails of the *Victory* appear to be much shattered?

A. I

A. I do not recollect immediately noticing them.

Q. What Sail was the *Formidable* under at that Time?

A. Forefall: Foretopfall Yard upon the Cap, the Sail being cut from the Yard, except a few Ribbands of the Canvas left;—Maintopfall hanging by the Slings, two Reefs down—Mizentopfall upon the Cap.

Withdrew.

Ordered, That the Masters of the *Queen*, *Prince George*, *Valiant*, and *Berwick*, have Notice to attend with their Log-books for the 27th and 28th of July last.

Adjourned, being a Quarter before Four o'Clock, till To-morrow Morning at Nine o'Clock.

ELEVENTH DAY.

FRIDAY, the 23d of APRIL, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

Captain Bazely again called in.

Q. Did the *Formidable* make any Efforts at that Time, to obey the Signal for getting into the Line?

A. Yes, we did, immediately.

Q. What were those Efforts?

A. Preparing to set the Mainfall, and splicing the Tacks and Sheets which were shot away on both Sides, and reefing new Braces for the other Yards that were all shot away, except one main Brace, the only one left whole in the Ship. That was the first Object, before we turned to knot the Shrouds, and to get the Masts properly secured, to make more fail.

Q. Was the *Victory* going large, or was she by the Wind at that Time?

A. She appeared to me to go Two Points from the Wind at that Time; she was almost right ahead; we were following her.

Q. Was the *Formidable* going large, or was she by the Wind?

A. Following the Admiral; keeping him rather to Leeward of the Bowprit;—between the Bowprit and the Fore Shrouds.

Q. At what Time was the Mainfall in a Condition to be set?

A. In the Course of Fifteen or Twenty Minutes after we set to Work to splice the Tacks and Sheets; it was set under Half an Hour.

Q. Was the Signal for the Line of Battle at this Time flying on board the *Formidable*?

A. Yes, I think it was; it was repeated immediately after the *Victory* had passed under our Lee.

Q. Was every other Effort made use of, by which the *Formidable* could have kept her Station in the Line after the Mainfall was set?

A. Yes, every Effort was made use of:—Officers and Ship's Company employed immediately to get the Ship refitted, till Ten o'Clock at Night, without any Intermission.

Q. Do you suppose that Sir *Hugh Palliser* imagined the *Formidable* was in the Line all the Afternoon?

A. Not all the Afternoon, by any Means.—Upon the Vice-Admiral of the Red, and the Ships with him to Windward, passing under the *Formidable's* Stern, and forming the Line astern of the *Victory*, the *Formidable* sheered a little to Windward, to give the *Queen* that Opportunity, with the Ships that were with her, to form, which threw us rather a-weather of the *Victory's* Wake;

and when the Vice-Admiral of the Red had quitted that Station, to form the Line ahead of the Admiral, it left a Space between the Admiral and the *Formidable*, a Distance astern, as near as my Judgment can carry me, of between a Mile and an Half and Two Miles, which was farther astern than our proper Distance in the Line of Battle.

Q. Did the *Victory* carry so much Sail as to prevent the *Formidable* from getting into her Station?

A. Yes; she increased her Distance from the first Instant after passing the *Formidable*, till Dark at Night.

Q. Did the *Victory* in general outfall the *Formidable* with the same Sail?

A. At all Times, and in all Situations of sailing.

Q. At what Time do you imagine Sir *Hugh Palliser* was first acquainted with his being out of his Station in the Line?

A. At the Time the Vice-Admiral of the Red first came down, we sheered to Windward, to give him an Opportunity to come astern of the *Victory*, but I cannot say what Time of the Day it was; my Attention was taken up with the Repairs of the Ship.—The *Queen* passed close under the Stern of the *Formidable*.

Q. At what Time did the Red Division quit the Rear, and pass ahead of the Center?

A. I perceived the Manœuvre, but cannot speak to Time.

Q. Was the Signal for the Line, or any other general Signal flying at that Time on board the *Victory*?

A. I believe the Signal for the Line of Battle was flying on board the *Victory*;—I am not positive;—I think it was; and it was so on board the *Formidable*, to the best of my Recollection.

Q. Did Sir *Hugh Palliser* order the Signal for the Line of Battle to be hauled down on board the *Formidable* any Time that Afternoon?

A. Never, to my Knowledge.

Q. Did you receive any Orders from Sir *Hugh Palliser* in consequence of your being out of your Station, and what were they?

A. My Orders in general, from Sir *Hugh Palliser* that Afternoon, were to attend to the refitting of the Ship, assisted by the Officers and the Ship's Company, who were stationed in different Parts, to get it done with all possible Dispatch.

Q. After you had hauled up, did you bear away again, and how soon?

A. Immediately after the Vice-Admiral of the Red and his Division were formed astern of the *Victory*. We kept the *Victory* just open, as I stood on the *Formidable's* Lee-gangway, in the Wake of the Fore-shrouds, or rather to Leeward; and, to the best of my Recollection, kept her near in that

that Position till Dark, going, to the best I can charge my Memory, about a Point or a Point and an Half from the Wind: She would not steer within a Point, having very little Headsail.

Q. Was the Situation of the *Formidable* such, as that the *Victory* might see any general Signals which were flying on board the *Formidable* at that Time?

A. I should think not those that were flying at the Mizzen-peak.

Q. Did you see the Signal on board the *Victory*, for Ships to bear down into the Admiral's Wake?

A. I did, near about Seven o'Clock, as well as I can judge: Signals to bear down, with particular Ships Pendants of the Vice-Admiral of the Blue's Division, which were immediately observed and repeated on board the *Formidable*.

Q. Was the general Signal to bear down made on board the *Victory* before the Pendants were hoisted?

A. I cannot charge my Memory with seeing it before I saw the Pendants.

Q. Was any Person on board the *Formidable* appointed to observe and minute the Time of Signals?

A. There were two Midshipmen appointed to take Minutes of Signals, but whether they had Opportunity to minute them, I cannot judge.

Q. When you repeated the Signal for bearing down, was the blue Flag hoisted under the Signal for the Line, or the Signal for the Line hauled down, and hoisted at the Mizzen-peak?

A. To the best I can charge my Memory, it was hoisted under the Signal for the Line, and continued so till Dark.

Q. Did the Vice-Admiral of the Blue bear down in consequence of that Signal?

A. No; he kept the Admiral open, in the Position I have before stated, to endeavour to recover the Length of his Station (at least that was the Reason given to me) before he would attempt to go down into the Line.

Q. Was the *Formidable*, at the Time you now speak of, in a Condition to go down and take her Station in the Line, with respect to her Sails and Rigging?

A. No, by no Means in the World, either to recover her Station, or keep her Distance between two Ships in the Line.

Q. What Sail was the *Formidable* under at this Time?

A. Under the Sail I have before described, but was preparing to bend her Foretop-sail;—the Fore-mast was not at that Time properly secured, to venture to bend a Sail to the Foretop-sail-yard, or to make more Sail upon the Fore-mast.

Q. Had the *Formidable* made no Alteration of Sail from the Time you first described her Sail till about Seven o'Clock, the Period last alluded to?

A. No, we had no other Sail to make; the Jib and Stay-sails being all shot away, and gone overboard, with the Stays, Halyards, and every Thing else.

Q. Had there not been Time, in Three Hours and an Half, to have brought on more Sail?

A. No, not in the Condition the Masts and Rigging were in, after coming out of Battle, to have ventured to carry Sail with Safety on either of the Masts, till the Shrouds and Stays were properly secured.

Q. Do not you think a Ship, going two Knots and upwards, may be able to keep her Station in the Line, or between two Ships?

A. No, by no Means, when the Admiral goes faster; which was certainly the Case as to the *Formidable* the whole of that Afternoon, if the

Formidable's Log-book is marked right with respect to her going, which I cannot pretend to answer to:—I neither hove the Log, nor know who did it.

Q. How were the Wind and Weather in the Course of that Afternoon, till Dark?

A. Fresh and squally at Times; cloudy towards the Close of the Evening.

Q. Did the *Fox* Frigate come to the *Formidable* from the Admiral, and at what Time?

A. The *Fox* cheered the *Formidable*, to the best I can charge my Memory, rather before Sun-set;—between the Time of repeating the Pendants and Sun-set:—The Pendants were repeated before she came to us.—I did not see the *Fox* till I heard the Cheering.

Q. What Time did the Sun set then?

A. At a little later than Half past Seven; between that and Eight o'Clock, in the Latitude of *Ushant*.

Q. Was any Message delivered by the *Fox* to the *Formidable*, and what was it?

A. None, that I heard:—My Situation at that Time would not permit me to hear what passed, had I even seen her before she cheered.

Q. In what Part of the Ship were you at that Time?

A. On the Fore-part of the Fore-castle; quite forwards.

Q. How long had you been there?

A. I left the Quarter-deck soon after the Pendants were repeated for the particular Ships of the Vice Admiral of the Blue's Division to bear down. Immediately after I had answered a Question, which the Vice-Admiral had asked me, I went forwards to the Fore-castle, and there I remained for some Time, to see that the Fore-mast was secured; and, just as that was done, I heard the Cheering from the *Fox*.

Q. Do you know whether any Message was returned from the *Formidable* to the *Victory*?

A. I never heard the Message received by the *Fox*, nor any Answer that was returned.

Q. Did Nobody inform you that the *Fox* was making towards the *Formidable*?

A. No.

Q. How did the *Formidable* steer respecting the *Victory*, after the *Fox* joined the *Formidable*?

A. Just keeping her open under the Lee, as before described.

Q. Did the Vice-Admiral of the Blue express his Uneasiness, at any Time in the Afternoon, at not being in a Condition to obey the Signals then out?

A. Frequently; to me at different Times; and was very anxious the whole Afternoon.

Q. You have said that the *Formidable* was a perfect Wreck after the Action—In what State were her Boats at that Time?

A. I do not recollect that any of the Boats were particularly damaged;—I meant a Wreck with respect to her Rigging and Sails.—We had only three of the Ship's Boats left at that Time, having lost three; and the Barge, one of the three that were left, had two or three large Shot-holes through her.

Q. Was the Weather such, that Boats could pass from Ship to Ship during that Evening?

A. Yes; I think a Boat might pass.

Q. Was your Ship in such Condition with respect to Yard-tackle-falls, &c. as to admit of Boats being hoisted out by them with Security to the Yards?

A. No, they were not till the next Morning.

Q. Do you mean it was impossible to get a Boat out?

A. No; we might have got a Boat out without a Mast upon Occasion; but we had not those Tackle-falls reeved.

Q. Could you have got a Boat out before Dark?

A. No, not without bringing the Ship to.

Q. Did the Vice-Admiral, at any Time in the Afternoon, propose to you endeavouring to get a Boat out?

A. No, by no means.

Q. Did he mention to you that he wished to shift his Flag on board any other Ship?

A. No; he never expressed a Wish of that Sort to me.

Q. What Course must the *Formidable* have steered to have got into her Station in the Line at Five o'Clock?

A. She was then astern of her Station; but I have no particular Recollection as to that Period.

Q. How many Ships astern of the *Victory* was the *Formidable*'s Station in the Line?

A. The Ninth Ship—I think there were Eight between the *Victory* and *Formidable*.

Begs to refer to the Line of Battle.

Q. What was the nearest Ship astern of the *Formidable* when the Pendants were thrown out for particular Ships?

A. I do not recollect making any Observation of any one Ship or Ships astern at that Time.

Q. Did not the *Ocean* quit the *Formidable*, and bear down into the *Victory*'s Wake?

A. I do not recollect that Circumstance.

Q. Was any Ship near the *Formidable*?

A. There were Two Ships to Windward; as well as I can recollect, they were the *Egmont* and *America*—I do not recollect any other—This is after the Pendants were repeated.

Q. In consequence of the Signals for particular Ships to bear down, did any Ships of the Blue Division go down into the Admiral's Wake?

A. I cannot speak from my own Knowledge that I observed any did—My Attention was engaged forwards about getting the Foretopfail set.

Q. When was the Foretopfail set?

A. Soon after the *Fax* cheered us; between that and Dark.

Q. Did you bear away into the Admiral's Wake at any Time before Dark?

A. We did not—I judged we were about a Mile awether of the Admiral's Wake, and Three Miles astern; and the Course we steered to get up into our Station, was keeping the Admiral just open upon the Lee-bow; which, if I am allowed to have any Judgment, was, I think, the most proper Course to recover our Station, before we made any Attempt to get into the Line; it struck me forcibly so at the Time.

Q. Do you think it was possible to have got the *Formidable* into a State to have bore down into her Station by Seven o'Clock?

A. I do think it was impossible.

Q. Did the *Ocean* in general outfall the *Formidable* with the same Sail?

A. In general she did.

Q. What was the Position of the Center Division at Seven o'Clock with respect to the *Formidable*?

A. Very little different from the Position I have just now stated.

Q. What was the Position of the Red Division at that Time with respect to the *Formidable*?

A. They appeared to me to be ahead of the *Victory*, in their Station, formed or forming.

Q. Was the Center Division formed at that Time in Line of Battle?

A. I do not believe the whole Division was.

To the Number of Ships astern of the Admiral I cannot speak.

Q. How many Ships of the Blue Division were in their Stations in the Admiral's Wake at that Time?

A. I do not know.

Q. Do you recollect seeing the Red Division pass from the Rear to the Van?

A. Yes, I think I do; but am not positive whether I did observe them till they had advanced some Distance.

Q. Then just before the Red Division began to move from the Rear, do you know how the *Queen* was situated from the *Formidable*?

A. She was rather before the Lee-beam of the *Formidable*, at, I should suppose, only Half a Mile Distance.

Q. Was the *French* Fleet formed in a Line of Battle about Seven o'Clock?

A. The whole of them appeared so to me at Seven o'Clock, as well as I can recollect.

Q. What was the Position of the headmost Ship of the *French* Fleet, with respect to the *Formidable*, at that Time?

A. The Van of the *French* Fleet was before our Beam, between the *Formidable* and the *Victory*, to Leeward of us, as near as I can form a Judgment, between Two and Three Miles.

Q. Do you recollect how many Points they might be open from the *Victory*'s Stern?

A. No, I cannot judge certainly—In my Judgment just at Dark, the headmost Ship of the *French* Van appeared to me to be about abreast of the *Victory*.

Q. What became of the *Formidable* after Dark?

A. She kept the same Course after the Admiral till about Half past Two in the Morning, and then she bore up and formed in her Station, in the Line astern of the *Victory* before the Day was fairly open.

Q. Were those Courses the Ship steered in the Evening and the Night particularly directed by the Vice-Admiral, or were his Directions in general to get the Ship into her Station?

A. The Courses were by the Vice-Admiral's own Directions to me; and when I went off the Deck at any Time in the Night after Ten o'Clock, the same Directions were left with the Officer who had Charge of it. Indeed I was never off the Deck Fifteen Minutes together during the whole Day and Night, nor ever sat down till after Ten o'Clock at Night to refresh myself.

Q. What were those Directions?

A. To keep the Admiral's Lights just open with the Ship's Lee-bow; and should we near those Lights to acquaint him.

Q. Was you that Night ever ahead of the *Victory*, or abreast of the Van Division?

A. We never were ahead of the *Victory* nor before her Beam; we never were abreast of the Van Division; we never were before the *Victory*'s Beam after she passed under our Lee, with the Signal for the Line of Battle flying; and we formed in the Line astern of the *Victory* before the Day opened; and, to the best of my Judgment, the Ship next astern of us was the *Ocean*; and there was one of the Enemy's Ships about a Mile from us, upon our Lee-quarter—That I am positive of.

Q. Were the *Victory*'s Lights discernible the whole Night?

A. Yes; I am very clear of that—I could distinguish her Three Lights in the Stern, and her Top-light.

Q. Did the *Formidable* carry her Lights that Night?

O

A. Upon

A. Upon my Evidence in the former Trial I said, that she did not carry her distinguishing Lights; and what led me to speak so directly was, the Top-Lantern was wounded, and the Difficulty for Two Hours, during the first Part of the Evening, to keep a Light, led me to say there was none; but, upon Enquiry, on the Approach of this Trial, respecting the Lights, I find there are People and Officers in the Ship, who can speak more distinctly to it; but I cannot charge my Memory that I know any thing of the Top-light burning that Night—The Stern-light I think I can venture to say was burning the whole Night—it was the Top-light about which I had the Difficulty, and which I answered to.

Q. Were any Orders given by the Vice-Admiral of the Blue relative to the Lights?

A. The Vice-Admiral observed to me the Difficulty of keeping in a Top-light; he did not think it of any Consequence, and it might keep the Two Ships that were aweather of us before Dark from going down into the Line—That was the Conversation that passed between us the first Part of the Evening upon the Difficulty of keeping in the Top-light.

Q. What was meant by the Difficulty of keeping in the Top-light?

A. The Candles would not burn, on account of the Wind through the Shot-holes, notwithstanding Canvass or Pieces of Hammock were put to cover the Shot-holes.

Q. Did you give any Directions in consequence of the Conversation you have mentioned?

A. I cannot recollect any particular Directions; the Officer of the Watch was present, and heard what the Admiral said: I do not even recollect now who the Officer was; and whether there were one or two upon Deck at the Time I cannot call to Mind.

Q. When the *Formidable* was ready to go into her Station, how much did she alter her Course to get into it?

A. She went very much large—the Wind rather upon the Starboard-quarter; being at that Time shot well up with the Admiral.

Q. How was the *Formidable* manned on the 27th of July?

A. Far from being a bad manned Ship.

Q. What was the Disposition of her Men after the Action, and during the Afternoon?

A. Sober, orderly, and very attentive to their Duty.

Q. Was not a Frigate ordered by the Admiral to attend the Blue Division?

A. There was a Frigate stationed to the Blue Division, which was the *Milford*, but she did not come particularly to attend us at any Time, that I observed, after the Battle of the 27th.

Q. Did the Vice-Admiral of the Blue ever call the Frigate to him by Signal or otherwise?

A. No; not that Afternoon, that I ever remember.

Q. Was the *Formidable* at any Time in the Afternoon, after the Action, in such Condition as not to be manageable?

A. She was manageable to wear, and manageable to steer, but by no Means in a manageable State or Condition to get up into her Station in the Line, or to preserve her Distance between two Ships in the Line.

Q. Was the *Ocean*, or any other Ship, in such a Situation in the Evening, as that the Vice-Admiral could have shifted his Flag on board her with Convenience?

A. I do not recollect any particular Situation that the *Ocean* was in, near us, in the Evening,

nor any other Ship, to which it could have been done with Convenience.

Q. Did it occur to you, from the Situation of particular Ships, and the Fleet in general at the Time, that it would have been a right Measure?

A. By no Means; it did not occur to me that it would have been a right Measure.

Q. What were your Reasons for thinking it would not have been a right Measure?

A. Because I did not think the Admiral meant that Evening to renew the Battle. That was my Opinion then, and I am still of that Opinion, from every Circumstance I can collect, and from my own Recollection of the Manœuvres and Situation of the Fleet.

Q. Was not the Signal for the Line flying the whole Afternoon?

A. To the best of my Recollection, I think it was.

Q. Was it flying on board the *Formidable* the whole Afternoon, to your Knowledge?

A. To the best of my Recollection, I think it was.

Q. When the Center and Van Divisions were in a Line, or near it, and the *Formidable* was steering after and keeping the *Victory* a little on the Lee-bow, did you observe what was the Position of the *Queen* at that Time respecting the *Victory*?

A. She appeared to me to be ahead of her in the Line.

Q. How far was the *Queen* open with the *Victory*, or was the *Queen* in a Direction shut in one with the *Victory*, respecting the *Formidable*?

A. I saw her open to the *Victory*, rather upon her Bow, I think: It does not strike me how much she might be open; I cannot recollect.

Q. When you repeated the Signal for the Line, did you fire a Gun at the same Time?

A. I do not particularly recollect that.

Q. Did you receive Orders from the Vice-Admiral of the Blue to repeat the Signal?

A. I was upon Duty in the Fore-part of the Ship.

Q. But are you positive it was repeated?

A. Yes, it was repeated; I saw it flying at different Times; it was not hauled down before Dark, as I recollect.

Q. Were the Ship's Colours hauled down any Part of the Night?

A. I do not recollect they were.

Q. In the Morning of the 28th of July, at Day-light, or soon after Day-light, did you take any Notice of the Situation of the *Stirling-Castle*, or the *Queen*?

A. I do not recollect taking any Notice of the *Stirling-Castle*; but, after Day-light, the Fleet bore up, to the best of my Recollection, about Half an Hour, and then I observed the *Queen* upon the Starboard-quarter of the *Victory*. She was upon the right Wing of the Fleet; the Blue Division was upon the left. In about Half an Hour, the Fleet brought to with their Heads to the Northward.

Q. When the *Victory* was nearest to the *Formidable* in the Course of the Afternoon of the 27th, after the Action, were you within Hail?

A. I do not recollect that we were within Hail; but we could not be far distant.

Q. Do you suppose, that from the *Victory* they could have seen the State and Condition of the *Formidable* at that Time?

A. I think they might:—I think it must be visible to any Ship within Half a Mile, or even at a Mile's Distance?

Q. You said, that after the *Victory*'s wearing to the

the Southward, she went away large; did you perceive her at any Time to keep her Wind after bearing away?

A. Not till late in the Evening.

Q. Did you take Notice of the Sail the *Victory* carried in the Course of the Evening?

A. Three Top-sails and Fore-sail; and, I believe, there might be a Mizzen-stay-sail or Mizzen out; but I cannot recollect particularly that.

Q. Do you know any thing about Reefs in the Top-sails?

A. I do not recollect any thing about Reefs, but I think the Top-sails were reefed towards the Close of the Evening; but I do not know how many Reefs they then took in.

Withdrew.

The Court was cleared.

After some Time spent in Deliberation, the Prisoner was brought in, and Audience admitted.

Mr. William Forfar, Master of the *Formidable*, sworn.

Q. Is the Book you produce, the original Log-book, containing the Remarks on board the *Formidable* on the 27th and 28th of July, without Alteration or Addition since made?

A. It is.

Q. How soon did the *Formidable* wear after coming out of Action on the 27th?

A. Almost immediately.

Q. How long did she continue on the Lar-board Tack?

A. Not long; but a very little while.

Q. At what Time did she wear again to stand to the Southward?

A. At about Two o'Clock, as near as I can recollect.

Q. Did you at that Time pass the *Victory*, and how near?

A. We passed her very soon, but not within Hail.

Q. What was the Condition of the *Formidable* upon coming out of Action in respect to her Sails and Rigging?

A. She was an entire Wreck in that Respect, particularly forward.

Q. How long after you had passed the *Victory* was it, that the *Victory* wore to the Star-board Tack?

A. The *Victory* wore under our Stern almost as soon as she passed us.

Q. Was she then within Hail?

A. I do not think she was: She could not have heard, I am sure.

Q. What Signals were flying on board the *Victory* at that Time?

A. I cannot tell.

Q. What Signals were flying on board the *Formidable* at that Time?

A. I cannot particularly tell;—I was so employed about the Repairs of the Rigging.

Q. Do you remember the *Fox* coming to the *Formidable*?

A. Yes.

Q. At what Time?

A. I cannot justly say to Time; it was a little before Sunset.

Q. Do you remember the *Fox* hailing the *Formidable*?

A. Yes, I do.

Q. What Message did she deliver?

A. I cannot say; I did not hear the Message.

Q. Did you hear any Answer returned to that Message?

A. No, I did not; I was upon the Fore-part of the Quarter-deck, when I heard them hail the *Fox* to Leeward; and I did not hear any thing, either one Way or the other.

Q. What was the Situation of the *Ocean* with respect to the *Formidable* from Five o'Clock till she bore away into the Admiral's Wake?

A. The *Ocean* was upon our Lee-quarter, something within a Mile, I believe.

Q. Was that before or after the *Fox* hailed the *Formidable*?

A. To the best of my Recollection, it was before.

Q. Did you see the *Ocean* bear away from you?

A. I think I did.

Q. How many Points did she appear to go more from the Wind than the *Formidable* was steering at that Time?

A. It might be Two Points, Two and a Half, or Three Points.

Q. What Sail had the *Formidable* set at that Time?

A. We had our Maintop-sail upon the Cap;—our Main-sail, and, I believe, the Mizentop-sail, was down upon the Cap:—That is all the Sail we had set.—The Fore-tack was on board, but the Sail was all to Pieces.

Q. Was the Condition of the *Formidable* such, as that she could have bore away at that Time?

A. Yes; we certainly could have kept her right before the Wind.

Q. What was the Position of the *Victory* from the *Formidable* at that Time?

A. About a Point under our Lee-bow;—she was ordered to be kept so, and we endeavoured to do it as near as we could.

Q. Did you receive any Orders from Sir Hugh Paliser relative to the Steerage of the Ship?

A. Yes.

Q. What were they, and when did you receive them?

A. To steer after the *Victory*, and to keep her about a Point under our Lee-bow: I believe the Orders were given about Five or Six o'Clock, when the Red Division stretched ahead of the Center.

Q. Do you think that was a proper Course to get into your Station?

A. Yes, that was the properest Course we could steer to get into our Station, as we were following the Admiral, and he was increasing his Distance from us at that Time.

Q. Was your Ship then in a Condition to go into the Line, and to keep her Station there?

A. No, by no means; it was impossible.

Q. Did you observe the Position of the *Queen* from the *Formidable* at the Time just before the Red Division made Sail from the Rear to take their Station in the Van?

A. I think a little before our Beam; I cannot be quite certain: I cannot speak to Distance, it might be a Mile or a Mile and a Half.

Q. Did you, at any Time in the Evening, see the Signal for the Line flying on board the *Formidable*?

A. I was so employed about the Ship, that I did not take notice of any Signals at all but the Pendants.

Q. Did you see the Blue Flag at the Mizzen-peak, the Signal for Ships to bear down?

A. I cannot say as to that; I saw Flags at the Mizzen-peak, but I cannot say what they were for.

Q. What Time did the *Formidable* get into her Station in the Line?

A. Just

A. Just about Break of Day; we bore away at Two, and, I believe, got into our Station about Three o'Clock on the 28th, in the Morning.

Q. At what Time was the *Formidable* in Condition to go into her Station in the Line?

A. Not before Dark; I think our Foretop-sail was not bent till about Eight o'Clock that Night.

Q. What was the Reason you were so long before you bent the Foretop-sail?

A. The Fore-rigging being all cut: The Mast being wounded and sound rotten at the Heart, we were afraid to trust Men in the Tops till we got the Shrouds set up, and the Mast was secured.

Q. Was you upon Deck in the Morning of the 28th at Day-break?

A. Yes.

Q. What was the Position of the *Formidable*, with respect to the *Victory* and *Queen*, at Day-break in the Morning of the 28th?

A. The *Victory* was right ahead: Her Top and Poop Lights were in one; and the *Queen* was upon the *Victory's* Starboard-bow, a considerable Way, Six or Seven Miles from us.

Q. Did the *Formidable* carry her distinguishing Lights the Night of the 27th?

A. Our Maintop-light I saw lighted; I cannot say as to Stern-lights.

Q. Were they burning the whole Night?

A. I cannot answer for the whole Night; I saw it lighted, and I saw it several Times alight in the Night.

Q. Do you remember any Orders to take the Light in?

A. No, I do not remember any thing of that; I remember the Man in the Top calling out that the Lanthorn was broke, and he could not keep the Light in.

Withdrew.

The Court was again cleared.

In a short Time the Prisoner was brought in, and Audience admitted.

The Prisoner was acquainted that no more Witnesses will be called on the Part of the Crown.

The Prisoner addressed the Court as follows:

"From the Want of any specific Charges against me, and other Circumstances peculiar to my Case, I find that I have Occasion for the particular Indulgence of the Court for Time to complete my Defence;—I therefore hope the Court will not insist on my giving it in so soon as To-morrow."

Being past Four o'Clock, adjourned till To-morrow Morning at Ten.

T W E L F T H D A Y .

SATURDAY, the 24th Day of APRIL, 1779.

THE Court met according to Adjournment. The Prisoner was brought in, and Audience admitted.

Agreed to adjourn till Monday, agreeable to the Prisoner's Request, for Time to prepare his Defence.

Before the Court was adjourned, the Prisoner requested Leave to have recourse to the Log-books of the *Victory*, *Queen*, *Valiant*, and *Berwick*.

The Court was ordered to be cleared.

After a short Time the Prisoner was brought in, and Audience admitted, when it was declared that the Judge Advocate may give the Prisoner Copies of the Remarks contained in those Ships Log-books for the 27th and 28th of July, so soon as those Books shall be sent him, in consequence of Orders already given for that Purpose.

Adjourned till Monday Morning at Eleven o'Clock.

T H I R T E E N T H D A Y .

MONDAY, the 26th Day of APRIL, 1779.

THE Court met according to Adjournment. The Prisoner was brought in, and Audience admitted.

The Prisoner having acquainted the Court that he is not yet prepared to proceed on his Defence, and requesting further Time for that Purpose, the following Paper, containing his Reasons for that Request, was read, viz.

"There being no avowed Accuser, nor any specific Charge, it has been only by Conjecture that I have found out to what Articles to frame my Defence; and though, from the Beginning, I was industrious to prepare myself for every possible Objection to my Conduct for the Time to which the Trial is restrained, yet the Examination of the Witnesses, called against me, brought forward some Points of Consequence, which had not before occurred to me, as necessary Objects of my Attention. Under these Circumstances, I am forced to request the further Indulgence of the Court, without which I fear that my utmost Ex-

ertions will not enable me to complete my Defence in the accurate Way I could wish, both for the Information of the Court, and for my own Justification.

"It is with great Regret that I make this Request of one Day beyond the Time originally intended by the Court; because I know of what great Importance it is that the Members of this Court should be soon released from the Trouble of the present Trial, and be at Liberty to give their whole Attention to the Public Service: But, as great Part of my Defence arises out of the Evidence already before the Court, my Witnesses are not likely to take up much Time; and therefore, I flatter myself, that, notwithstanding the Time for giving in my Defence should be extended another Day, the Examination of Witnesses will be closed by the End of this present Week."

Agreed to adjourn till To-morrow Morning.

Adjourned till To-morrow at Eleven o'Clock accordingly.

FOURTEENTH DAY.

TUESDAY, the 27th of APRIL, 1779.

THE Court met according to Adjournment.
The Prisoner was brought in, and Audience admitted.

giving Assurances that he shall then be ready to enter upon it.

The Prisoner requesting he may not be required to proceed on his Defence till To-morrow, and

Adjourned till To-morrow Morning at Eleven o'Clock.

FIFTEENTH DAY.

WEDNESDAY, the 28th of APRIL, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

The Prisoner delivered a Paper into Court, containing his Defence, which he desired might be read by the Judge-Advocate.

It was read accordingly, and is as follows:

Mr. President, and Gentlemen of the Court,

BEFORE I enter into the formal Vindication of my Conduct, I intreat the Indulgence of the Court, whilst I speak a few Words concerning the peculiar Circumstances, under which I appear before them.—There is some Consolation in lamenting my Misfortunes in the Presence of Persons with generous Minds; Men, whose honourable Feelings will not deny the Tribute of Commiseration to the Unfortunate.

I may truly call myself unfortunate in the severest Sense of the Word; for all those Sufferings, which now afflict me, have been brought on, by the Pursuit of a candid and fair Hearing, to defend my Character, against the unprovoked Attacks of the most inveterate and unrelenting Enemies.

Four-and-forty Years I have now had the Honour to serve my King and Country in the Navy; during which long Time I have not been without my Share of the Hardships, the Dangers, and the distressful Incidents so common to Men of our Profession. From the Commencement of this long Service, it has ever been my first Ambition to deserve the favourable Opinion of my Countrymen, by the most industrious Exertion of my Faculties in every Way proper for a naval Officer; having neglected no Opportunity of meeting the public Enemy, or of performing any other Duty to which I was competent.

It has been my Good-fortune to have had my Labours in the Service rewarded by my Sovereign with honourable and profitable Offices; and also, till the Occasion of the present Trial, uniformly to meet with the Approbation of my Superiors in Command. But I have ever valued my Honour and Character as an Officer and a Man at a higher Rate, than the Emoluments of the most beneficial Employments; and it has ever been my Principle to be ready to make a Sacrifice of the latter, rather than tamely submit to the Affliction of the former.

When it was thought expedient to arm our Fleets against France, though already possessed of Offices which supplied an ample Income; and though for thirty Years of my Life afflicted with a painful bodily Infirmary, from an Accident in the Course of Service, and therefore more exposed to Danger from the Fatigues of a Sea-command; yet, warmed by a Zeal to serve my Country once more in the Walk of my Profession, I was happy to be honoured with the third Post in the Fleet under the Command of Admiral Keppel.

An Engagement soon ensued, and for my Share in it the Admiral publicly and repeatedly testified his Approbation of my Conduct. But the Action not being followed by that splendid and complete Victory our Countrymen expected; some of the Friends and Dependents of the Admiral thought fit to cast injurious Reflections both on me and my Division, though much the greatest Share of the Engagement had fallen to our Lot; and it was endeavoured, by Letters in the public Prints, and otherwise, to impress the World with an Idea, that my Misconduct more particularly was the Cause of not having come to a second and more decisive Engagement.

I appealed to my Commander in Chief for Justice to my Character; but I found him averse to giving the proper Check and Contradiction to the Reports, by which my Honour was wounded; and, notwithstanding his having at first publicly approved of my Conduct, I

had too good Grounds to suspect, that privately he did not discourage a very opposite Representation of me.

Inflamed with Resentment by the Attacks on my Character as an Officer, and by the Refusal of the Commander in Chief either to accuse or exculpate me, I pursued Measures with a View chiefly to my own Justification, which have brought upon me the Rage of a violent Party; and the most unexampled Irregularities have been practised, to effect my Ruin and Destruction, as well as through the Pretence of my Name to disturb the public Tranquillity.

To check these Proceedings, I anticipated the Wishes of my Enemies, by making an immediate Surrender of several valuable Offices, to the Amount of between two and three thousand Pounds a Year; leaving myself with no other Mark of Distinction, than my military Rank, which I retained with a View only to have the Benefit of a Trial.

But my Enemies prescribe no Bounds to their Rage and Malice. — Before my Trial was ordered, every Species of Threat was applied to deter me from appealing to a Court-Martial for clearing my Honour; and since it has been known, every Art, which the Industry of an Host of powerful Enemies can supply, has been practised to disappoint me of a fair Hearing. — All accuse secretly; but not one of the whole List chooses to come forth in a manly Way to avow his Accusation. — By this ungenerous Manner of Proceeding, I am exposed to the most extraordinary Disadvantages. — My real Accusers become Witnesses. — No specific Charge is made; in consequence of which, I scarce know how to shape my Defence. — Every Witness claims the Right of attacking me as an Accuser; so that since the first Day of the Trial, new Accusations have been daily springing up. — If the Accusation fails of Success, Blame belongs to Nobody. — If it succeeds, each will claim a Share in the Merit of making it. — But even all this is not enough to gratify their Retentment. Since my Trial has been ordered, they have attempted to deter me from it, by conspiring to address his Majesty to degrade me from my Rank; and I have too much Reason to believe, that two of the Admirals, and most of the Captains examined against me, have been so regardless of even the Semblance of Decency as to sign it; though even when they knew, that they were to be called upon as Witnesses. — Nay, since the Trial has been going on, daily Attempts have been made in the public Papers to alarm my Judges; as if themselves would not be safe from Attack, for doing me Justice.

With all this Weight of Party and Prejudice co-operating against me, my Enemies may have flattered themselves, with the Hopes of disarming me of the Fortitude requisite to sustain me in so oppressive and trying a Situation. But, feeling a Consciousness of my Innocence, and encouraged by Confidence in your firm Impartiality, unequal and severe as the Conflict is, I look to the Issue of it without Dread or Apprehension.

THE general Subject of the present Trial is my Conduct, as Commander in the third Post of the *British* Fleet under Admiral Keppel, on the 27th and 28th of July last; more especially my Conduct subsequent to the Action with the *French* Fleet on the former of those Days.

The first Thing insinuated against me is, that, at Five in the Morning of the 27th, my Ship was considerably to Leeward of her proper Station. I collect this Charge from the Manner in which Admiral Keppel, on his Trial, explained the Object of the Signal for six or seven of the Ships of my Division to chase to Windward; for, as he represents, this Signal was to close the Interval between the *Victory* and me, occasioned by my being far to Leeward; and Admiral Campbell, who now appears to have made this Signal, so important in its Consequences, without previously consulting the Commander in Chief, justifies it under the same Idea.

Whether those Gentlemen mean absolutely to impute any Fault to me in this Respect, is not quite clear from their Words. But, as they may bear such a Construction, it is not fit, that I should suffer them to pass unnoticed.

My Answer is, that, at the Time stated, the *Formidable* was upon the *Victory's* Lee-bow; and that this was the Position, in which the Admiral's last Signal for the Fleet's tacking all together, which was in the Morning of the preceding Day, had placed me; and that he suffered me to continue in it, without making any Signal to alter my Position; which implies, that he did not disapprove of it. As to the Evidence of Admiral Campbell on this Head, he placing me before the *Victory's* Beam, it will be found contradicted, not only by my Officers, but by Admiral Keppel's own Journal, which expressly describes me on the 27th to have been on his Lee-bow at Day-light. The Words of the Journal are, *At Day-light saw the French Fleet to Windward, the Vice-Admiral of the Red and his Division well on the Weather-beam, the Vice of the Blue on the Lee-bow.* Therefore it seems most probable, that Mr. Campbell, perhaps not a little solicitous to justify his own Signal, I will not say influenced by a Desire to strain every Thing into a Crimination of me, is inaccurate

in the Recollection of my Position. But be this as it may; and though it should be admitted, that Rear-Admiral *Campbell* is right in supposing me to have got more to Leeward in the Morning of the 27th than I was the Night before; yet I trust, that this will be no Cause of Censure of me, unless it shall appear, which I think impossible, that my being so far to Leeward was owing to some Negligence or Inattention on my Part. Sure I am, that I was ever studious to keep my Ship, where I thought the Admiral's Motions required her to be; nor have I the least Reason to suppose, that my Officers were wanting in Exertions to second my Endeavours, and obey my Orders for this Purpose.

As to my Conduct in the Engagement itself, it was so unexceptionable, that the most bitter of my Enemies do not complain of it. Consequently, to enter into a very formal Justification of this Part of my Conduct would be giving unnecessary Trouble. However, I doubt not but that the Court will be attentive to the Share I had in the Engagement; as well because the proper Discharge of my Duty, whilst the Action lasted, may entitle me to strong Presumptions in my Favour, as because it will account for the extraordinary Damages to my Ship, which materially relate to the Defence of my subsequent Conduct.

With a View to this, I beg to be indulged with a few Words relative to the Time of Action itself.

I went into Action under very singular Disadvantages; for, whatever might be the Intention of the Signal for most of the Ships of my Division to chase to Windward, the Effect produced was separating so many of my Division from me, and from each other, that, during the Time of Action, I had not one Ship near enough to support me. Both the other Flag Officers were supported in the Action by all the Ships of their respective Divisions; and the Admiral's own Division was further aided by the Junction of several Ships of mine. But the Signal for chasing left me with only two Ships in any Degree near me; and these, by the Chasm from the Want of my other Ships, were at too great a Distance, to take off any of the Enemy's Fire, the nearest Ship ahead of me, being Half a Mile from me, and the nearest astern, a Mile; except for a few Minutes at the latter End of the Action, when one of the Ships astern of me shot close up to Leeward of me. Before I began firing on the Enemy, I backed my Mizzen-top-sail, and it was kept so the whole Time I was passing the *French* Line; which, by retarding my Progress, enabled me to give the *French* more of my Fire, and consequently was the Cause of my receiving more from them. The first Ship I became close engaged with, was the first or second Ship ahead of the *French* Admiral; after which I successively passed the Remainder of the *French* Center, and the whole of their Rear; and that no Ships might escape my Fire, I hauled my Wind, to close with the two sternmost Ships of the Enemy, which appeared to have kept more to Windward than the other Ships I passed, and not to have been engaged before. On the whole, I believe, that the *Formidable* fought seven or eight Ships more than fell to the Share of Admiral *Keppel*, whose Log takes notice of engaging only six Ships of the Enemy, besides the *French* Admiral, and is therein confirmed by the Evidence of Mr. *Mors* at the late Trial, he speaking of only seven or eight Ships.

These Particulars of my Conduct in the Engagement, I should be above relating, if it was not necessary to account for the extraordinary Damages to my Ship; and if some of the Witnesses against me, when they were examined to this Point, had not spoken of me in such cold and indifferent Language, as strongly marked their Anxiety to prevent any favourable Impressions of me on the Minds of the Court; lest my proper Behaviour, in the critical Moment of Action, should induce a favourable Construction of my subsequent Conduct. It is very true, as Admiral *Keppel* expresses it, that I only performed my Duty like other Officers. But the Question, which came from the Court, did not lead to so invidious and offensive a Comparison as the Answer points at; nor can I imagine, why it was answered in that Way, except from Ill-will towards me. If any Comparison was proper, it should have been, not of the Conduct of one Officer with another, but of the Share which they respectively had in the Action, from the different Situation of their Ships. It might be, and so the Fact was, that it was my Fortune, and that of the Ships of my Division, to have more of the Action than the Ships of the two other Divisions. Yet it would be a great Injustice to suppose, that the Captains of the other Divisions, if they had been engaged on the same Terms, would not have acquitted themselves with equal Zeal.

On coming out of the Action, the first Moment I was clear of the Smoke, I anxiously looked for the Admiral, being ever solicitous to second what appeared to me to be his Design. At this Time he had wore, and I saw him at some Distance, with the Ships of his own Division about him, and some of mine, which had joined him in the Beginning of the Engagement. He was standing towards the Enemy, and had the Signal for Bauld still flying. The Red Division was then to Windward of the Rear of the Enemy. Hence I took for granted, that the Admiral intended to renew the Engagement immediately; and, rejoicing at the Idea, I did not one Moment hesitate to endeavour taking the Lead in what then appeared to me so glorious a Design. Therefore, though my Ship was the last, or last but one, which came out of Action, and had apparently suffered very much in her Sails and Rigging,

Rigging, and in Loss of Men, yet I instantly ordered the Ship to be wore, and to stand towards the Enemy, who was still within Gunshot of us, without waiting to examine into the State of our Damages. I also directed the Officers and Men to return to their Quarters. My Orders were executed instantly; and, by the Use of temporary Ropes to brace the Yards about, the Ship was wore. Admiral Keppel and the Officers of the *Victory* say, that they were quite ignorant of this Movement of the *Formidable*. But to others it was very apparent, particularly to Captain Marshall, and the Captain of the *Worcester*. How so material a Motion of the Commander in the third Post escaped the Notice of those on board the Commander in Chief, I know not. But, whatever the Cause may have been, I feel this as one of the many Instances, in which it was my Ill-fortune not to be an Object of their Attention under any Circumstances, which place my Conduct in an advantageous Point of View.

Some Time after thus wearing and standing towards the Enemy, I perceived, that the Admiral had hauled down the Signal for Battle, and shortened Sail; and that the same was done by the Vice-Admiral of the Red. This led me to imagine that the Admiral had given up all Thoughts of immediately renewing the Action; and I was not mistaken, for the Admiral confesses and justifies it. At the same Time seeing the whole *French Fleet* wear to come on the Starboard Tack, and that three of them stood directly towards the *Formidable*, I directed her to be wore a second Time, and advanced to join the Admiral. This Step appeared to me necessary to prevent the Danger of being cut off; and it was a further Inducement to me, that I then did not see any Thing to warrant my keeping so near to the Enemy, and at such a Distance from the Admiral and the Body of the Fleet, as I was then alone.

At this Period arises the second Article of Charge against me, for the Origin of which I am also indebted to Rear-Admiral Campbell; for it was he who first said, that, as the Signal for the Line at a Cable's Length asunder was then flying on board the *Victory*, and he was on the Larboard Tack, I ought to have continued on the same Tack, and also ahead of the Admiral, that being my Station in the Line on the Larboard Tack.

But the Fact is, that we on board the *Formidable* did not see the Signal for the Line till we came abreast of the *Victory*. That Signal being at the Mizzen-peak, and the *Victory* standing end-on towards the *Formidable*, it was impossible that we should see it sooner. It was also invisible to us on board the *Arethusa*, the repeating Frigate; for she had been called in from proceeding to her Station, and kept near to the *Victory*, Captain Marshall being actually on board her. This brought both Ships into the same Position in respect to the *Formidable*, and rendered it equally impossible to see the Signal on board of either. I believe that I am quite accurate in stating the Position of the *Victory* and *Arethusa*, at the Time I am speaking of, that is, from the second Time of the *Formidable's* Wearing till she passed the *Victory*. Captain Marshall, having been first called by Signal, and then hailed, had been an Hour on board the *Victory*; a very extraordinary Circumstance, as it appears, that there were no Orders for him, and his being with the repeating Frigate out of her usual Station, during so critical a Time, deprived me, and probably some others, of the full Opportunity of seeing the Signal for the Line. At all Events, I am certain, that in point of Fact I never saw the Signal for the Line till we were abreast of the *Victory*, though I continually directed my Attention to her; nor was it seen by any of my Officers. This will appear the less extraordinary, when it is considered, that Sir Robert Harland never saw it, whilst on the Larboard Tack; though his Situation on the *Victory's* Weather-bow rendered it indisputably more probable, that he should see it, than that I should, when right ahead of the Admiral. Captain Laforey also acknowledges, that he did not see the Signal for the Line, whilst he was on the Starboard Tack, and the *Victory* on the Larboard, till he passed the *Victory*. It is material to observe, that whilst I was standing towards the *Victory*, no Ships were formed in a Line ahead or astern of the Admiral; nor was there any other Indication of the Signal for the Line being flying; for it had not been enforced, either by the Signal for seeing particular Ships out of their Stations, or by the Signal for particular Ships to make more Sail; both which Signals, being at the Maintopmast-head, might have been seen by us, though the Signal for the Line was invisible. But if I had seen the Signal for the Line, my wearing and approaching towards the *Victory* on a contrary Tack would have been justifiable; because, as I have already explained, the Signal for Battle was hauled down, and the *Victory*, with the Vice-Admiral of the Red and his Ships, had shortened Sail; and at the same Time, I saw the *French Fleet* wearing to come on the Starboard Tack, and Three of their Ships pointing towards me. Under these Circumstances, it appeared to me, that, if I had not wore again, and stood to join the *Victory* and the rest of our Fleet, the Three Ships of the Enemy, which pointed to me, would have had it in their Power, to have separated me from the rest of our Fleet. My Danger at this Time is apparent, even from the Evidence of Admiral Keppel himself. About the Time of my wearing, he made the Signal to wear; and though he was considerably more distant from the Enemy, than the *Formidable* was when she wore, he says, that he should not

have deserved the Name of an Officer, if he had not wore; founding himself on the Circumstances of the Enemy's forming their Line upon the Starboard Tack, and his Line's not being formed. This was only a little before the Time, when Sir Robert Harland at a former Trial described Admiral Keppel to be in so much Danger, that, seeing him, as Sir Robert said, unsupported, and within the Power of the whole French Force then altern of him, he was coming down to support the Admiral, without waiting for Orders. If then it would have been so dangerous for the *Victory* to have continued on the Larboard Tack, what must have been the Consequence, if my Ship, alone, and so much nearer to the Enemy, had remained there? But notwithstanding all these Circumstances to justify me for wearing the second Time, and advancing to join the *Victory*, the Admiral, in his Evidence, could not help betraying his Inclination to blame me; and Rear-Admiral Campbell, ever industrious to attack me, goes a Step further, precipitately and decidedly imputing to me a positive Disobedience to a Signal, which I neither did nor could see. This is the more observable; because Admiral Keppel acknowledges, that when I passed the *Victory*, there was no other Ship with her, notwithstanding the Signal for the Line, and that mine was the last Ship which passed him; and further, that he then saw no Possibility of forming the Line on the Larboard Tack, and had therefore made the Signal to wear, which the *Formidable* had already executed. Yet he approved of all the other Ships which passed him, but blames me. How is this Partiality to be accounted for, otherwise, than by supposing both Admiral Keppel, and Rear-Admiral Campbell, to be influenced in their Representations of my Conduct by Ill-will towards me?

One other Observation only seems necessary on this Head, which is, that the Admiral himself confesses, that my wearing the second Time, coming on the Starboard Tack, and joining him, did not prevent his renewing the Engagement, or produce any other ill Effect, and was so far from interfering with his Views at the Time, that I was only doing that which he was on the Point of doing.

A little before Three o'Clock, the *Formidable* passed to Leeward of the *Victory*; and in passing the Signal for wearing first opened upon us, and then the Signal for the Line. The latter was soon after repeated by me, notwithstanding the Doubts, which may have arisen from its not having been observed by several of the Witnesses examined against me. The Fact of my repeating it is not only mentioned in the *Formidable's* Log-book, but will be proved by the Officers of the Ship, particularly the Midshipman, whom I appointed to repeat Signals, and by other Witnesses. It will also be further proved, by a very remarkable Piece of Evidence, which probably never would have occurred to me, if a Member of this Court had not asked one of the Witnesses, whether a Gun was not fired; as it ought to be, when the Signal was repeated. This Question led me to call for the Gunner's Expence-book of the *Formidable*, where, to my great Satisfaction, I found a most corroborating Evidence of our repeating the Signal for the Line; namely, an express Charge of the Expence of Powder for the Gun fired on the Occasion, which appears to be the last Gun fired from my Ship on the Day of Action. The Gunner's Expence-book I shall have produced, for the Inspection of the Court; and I hope, that this, with the other Evidence, will remove all Doubts about a Fact, which some of the Witnesses against me have so positively denied. I shall also prove, that the Signal for the Line was kept flying till it was Dark; except for a short Interval, during which, it was shifted to make the Signal, for Ships to Windward to bear down into the Admiral's Wake, the first Time of hoisting, more conspicuous, in the same Manner as was done on board the *Victory*. As to the Signal for wearing, it was not repeated by me; because, being already on the Starboard Tack, as that Signal required, I deemed the Repetition improper. Rear-Admiral Campbell, on the Trial of Admiral Keppel, spoke as in Doubt, whether the Signal for wearing was made till after I had passed the *Victory*, saying, that the *Victory* did not wear till a Quarter of an Hour after passing on the Larboard Tack and to Windward of the *Formidable*, which, to the best of my Recollection, is allowing much too long a Time; for it appeared to us on board the *Formidable*, that the *Victory* wore almost immediately after passing to Windward of us. But the Purser of the *Arcturion*, who took the written Minutes of Signals on board the Repeating Frigate, makes this Signal for wearing to the Starboard Tack to have been up Half an Hour; as by his Account it was hoisted at Half an Hour after Two; and Captain Marshal and the Mate of the *Arcturion* agree with him that it was not hauled down till Three. Consequently it was up a Quarter of an Hour before I passed to Leeward of the *Victory*, even though Admiral Campbell should be correct in supposing, that it was so long as a Quarter of an Hour after the *Victory's* passing us on the Larboard Tack, before she wore.

Within a few Minutes, or, to adopt Admiral Campbell's Reckoning, a Quarter of an Hour, after the *Formidable's* passing the *Victory*, whilst the latter was on the Larboard Tack, she wore and repassed to Leeward of the *Formidable*, and very near her.

Here it is proper to take Notice of a very strong Charge of Disobedience to Signals, which my Enemies have repeatedly urged against me, with the utmost Confidence, and which

has been the great Cause, both of the late Trial, and all my present Sufferings. The Charge, as first stated in the Public Prints, was, that the Cause of Admiral Keppel's not re-attacking the *French* at Half past Three in the Afternoon was my not joining him, but being at that Time Four Miles to Windward with my Division. Admiral Keppel, speaking in Parliament a little Time before the Charge which produced the late Trial, though he then seemed to disclaim the Imputation of any wilful Disobedience on my Part, pointed at the same Thing; for he asserted, that the Signal for coming into his Wake was flying from Three o'Clock to Eight in the Evening, unobeyed. In his Defence on the late Trial, the Admiral pursues the same Idea; for he asserts, that the Blue Flag, for Ships to Windward to come into his Wake, was hoisted the first Time; because I continued to lie to Windward; and by so doing, kept my Division from joining him. I am now citing the Admiral's own Words, when on his Defence; and in the Evidence he has given against me on Oath, he expresses himself to the same Effect; when he explained to the Court the Occasion of first hoisting the Blue Flag. But the Charge, thus boldly asserted, supposes Facts, which never existed. According to Captain *Marshall*, his Purser, and the Mate of the *Arctusa*, all speaking from the written Minutes of Signals taken at the Time, the Blue Flag for Ships to Windward to come into the Admiral's Wake, was first made at Twenty-four Minutes after Three, and it was hauled down a few Minutes after; the two former Witnesses mentioning Thirty Minutes after Three, and the latter Twenty-seven Minutes: And all three agree, that it was not made again till Thirteen Minutes after Six. It is also proved by the Minutes of the Purser, who was the Person appointed by Captain *Marshall* for the Purpose, that the Signal, for wearing the second Time, and coming to the Starboard Tack, was made at Thirty Minutes after Two, and hauled down at Three; which shews, that, at this latter Time, the *Victory* was in the Act of wearing; after which she passed the *Formidable* to Leeward, so near as to be almost within Hail, and went ahead of her, and then edged away, leaving the *Formidable* in her Wake. Within so short a Time as the Twenty-four Minutes, from the *Victory's* wearing, to the hoisting of the Blue Flag on board the *Arctusa*, it was absolutely impossible, that the *Victory* could have wore, passed the *Formidable*, and got so far ahead of her, but what I must have been much nearer to the *Victory* than the Mile prescribed to me, by my Station in the Line; and as by the *Victory's* edging away I was left in her Wake, the Blue Flag could in no Sense be applicable to me: Nor was it applicable to the Ships in general of my Division; for all of them, except the *Defiance*, which had joined the Red Division, and the *America*, which was far ahead, were a long Way to Leeward of the Admiral, when the Blue Flag was first hoisted, as will appear from examining the Evidence of the several Captains of my Division, at the late Trial. It also appears by the same Testimony, and the Admiral's own Account of the Ships when he made the Signal to wear to the Starboard Tack, that no Ship was near me but the *Victory* herself; so that, though I had been to Windward, I could not be said to have kept the Ships of my Division with me. So far I justify myself on the Supposition, that the Admiral might possibly have got to Leeward of me, a little before the first Time of making the Signal for Ships to Windward to bear down; and if there was nothing more, I should stand fully exculpated from being the Cause of that Signal. But an additional Fact is come out on the present Trial, from a Witness examined against me, which removes even the Possibility of my being the Object of the Blue Flag, the first Time of hoisting it. Mr. *Graham*, who took the Minutes on board the *Arctusa*, has informed the Court, that the Blue Flag, though not repeated on board the Repeating Frigate till Twenty-four Minutes after Three, was hoisted on board the *Victory* at Fifty-six Minutes past Two; Captain *Marshall* not chusing to repeat it, till the Signal for the Line was hauled down on board the *Victory*, to shew it plainer. Compare this with the Time of hoisting the Signal to wear to the Starboard Tack, which was at Thirty Minutes after Two, and the Time of the *Victory's* actually wearing, which, from the written Minutes taken on board the *Arctusa*, appears to have been at Three, and the unavoidable Result must be, that the Blue Flag, for Ships to Windward to bear down, was first made, when the *Formidable* was actually to Leeward of the *Victory*. What then becomes of the Admiral's confident Assertion, that my still continuing to Windward was the Cause of this Signal? I beg the Court's particular Attention to this Exposition of the numerous Untruths and Misrepresentations, which have been applied, to make the Situation of my Ship the Cause of first hoisting the Signal for Ships to Windward to bear down. I was represented to have been to Windward of the *Victory*, when I was actually to Leeward of her. If I had not been to Leeward, the Time would have placed me in the Admiral's Wake, within the Distance of my Station in the Line; whereas the Charge supposes me to have been so far and so long out of his Wake, as to require an enforcing Signal. I am represented to have continued to Windward, before the Signal was made, which implies, that I had been so for some considerable Time. But if I had really been to Windward, the Twenty-four Minutes between the *Victory's* second wearing, and the first Time of the *Arctusa's* repeating the Signal for Ships to Windward to bear down, would barely have allowed Time for the *Victory's* passing to Leeward of the *Formidable*. My Division is represented to have been

to Windward of the Admiral, when only one of them was so. They are said to have been kept near me, when they were at a Distance from me, and actually to Leeward of the Admiral, and when the only Ship near me was the *Victory* herself. The Signal for coming into the Admiral's Wake was alleged to be flying from Three o'Clock in the Afternoon till Eight o'Clock at Night, disobeyed by me. But the Fact turns out to be, that it was never flying from Twenty-seven or Thirty Minutes after Three, to Thirteen Minutes after Six; and it is as certain, that it was not applicable to me at the moment, till this latter Time.

But if neither I nor my Division were Objects of the Blue Flag the first Time it was hoisted, it may be asked, to what Ships it could be applied; and this I think myself able to explain to the Court, though in Strictness my Justification requires no more, than proving myself not within the Meaning of that Signal. The Court will please to recollect, that the Blue Flag was first hoisted at Fifty-six Minutes after Two at the Mizzen-peak, with the Signal for the Line; and that the *Proserpine's* Signal was made at Three o'Clock, to carry a Message to Sir Robert Harland then to Windward, to form in the Rear of the Admiral, instead of going ahead, which was the proper Station of the Red Division on the Starboard Tack; and further, that the Signal for the Line was hauled down at Twenty-three Minutes past Three, to make the Blue Flag the plainer. It is therefore extremely probable, that the Blue Flag was first intended for Sir Robert Harland's Division to bear down. But lest the Signal for the Line, the most commanding of all Signals, should be understood to controul the Blue Flag, and so prevent Sir Robert from obeying it, I conclude, that Captain Sutton was sent with the Message for Sir Robert's forming in the Rear; and as he was some Time in going, and the Admiral was apprehensive perhaps of an Attack on himself and the crippled Ships to Leeward of him, it is probable, that the original Signal for the Line was hauled down to prevent any Misconception of the Blue Flag, and so to expedite the Purpose of the Message. If the Blue Flag was not intended for Sir Robert Harland's Ships to Windward, I can no otherwise apply it, than by supposing it made for some Ships of the Center Division, which might be then to Windward, instead of being in their Stations astern of the Admiral.

After the Two Ships had passed each other, the *Formidable* remained for some Time within the Length of her Station in the Line; she being the Ninth Ship from the *Victory*, and consequently Nine Cables Lengths, or rather more than a Mile from her. But, as the Admiral carried more Sail than the *Formidable* in the disabled State of her Sails and Rigging could make, the former was gradually and constantly increasing her Distance from the latter till Night. The particular Time when the *Formidable* was first left beyond the prescribed Distance of her Station in the Line, it is impossible to fix. But whatever the Time was, whether an Hour or more after being passed by the *Victory* on the Starboard Tack, it is the Period, from which I am to account for not preserving my Station.

To find out whether I used my utmost Endeavours to preserve it, there are Two Things to be considered; first, whether I steered the Course proper for getting up to my Station again; and secondly, whether I carried all the Sail in my Power. If my being out of my Station in the Line was owing to any Failure on my Part, it must have been in one or both of these Points; and therefore they are the true and proper Test of my Conduct.

When the Admiral had passed to Leeward of us, he edged away, which placed us in his Wake, and we continued to steer after him, till the Red Division passed under our Stern to form in the Rear, when we hauled a little to Windward out of their Way. This, at the same Time that it served to give Room to the Red Division to form, prevented us from being interrupted in refitting our Rigging, without producing any Inconvenience to us, as it was impossible in our then State to have kept our Station between any Two Ships in a Line. But as soon as we had got clear of the Red Division, my Attention was to keep the Admiral a little open under our Lee-bow, which was keeping the Command of the Wind, for taking our Station when we got up the Length of it, and were capable of managing our Ship in the Line. This has been already proved to the Court by the Captain and the Master of the *Formidable*, who have mentioned the Directions I gave on the Occasion, and that they were complied with as exactly as was possible, and that we constantly kept the Course I have described. I shall also trouble the Court with further Examinations on the same Head.

That we carried all the Sail in our Power will be fully explained to the Court, when I examine my Officers to prove, how greatly the *Formidable* had suffered in her Sails and Rigging. One of the principal Impediments to our keeping up with the Admiral, was our Inability to bend our Foretop-sail till between Seven and Eight in the Evening; the Reason of which was stated to the Court, both by Captain Bazley, and the Master of the *Formidable*; and if it shall be necessary, it may be further enquired into, when I call them and my other Officers.

In the Course of the Evidence against me, it has been attempted to impress the Court with an Idea, that the *Formidable* was damaged in Sails and Rigging little more than the
Ships

Ships in general, and not more than the *Victory*. But the Court will consider and decide on the Truth of this Insinuation, when all the Particulars of our Damages are related by my Witnesses. In the mean Time, it may not be improper to remind the Court, how very improbable it is, from a Comparison of our much greater Loss in killed and wounded, than the rest of our Fleet experienced; that we should not have suffered more in other Respects. It fell to the Lot of my Division to have the greatest Share of the Action, in consequence of which we had more killed and wounded than Admiral Keppel's and Sir Robert Harland's Divisions together; and the *Formidable* had not only more killed and many more wounded than any other Ship, but even had singly, within Two, as many killed and wounded, as all the Ten Ships of Sir Robert Harland's Division collectively.

My Enemies have laid much Stress on its being so long before the *Formidable* was refitted, as if we had been tardy and dilatory. But I am confident, that the Testimony of my Officers, when they are examined, will evince the contrary; and that every possible Effort was made to repair our Damages in the shortest Time. If the Time, for which we were so employed, should appear long, the Court will please to consider the many Circumstances which concurred against us. The *Formidable*, I may safely say, had suffered in the Action more than any other Ship; and as we came last out of Action, we consequently began to repair later. The Time was still further protracted by our wearing immediately to stand towards the Enemy again, and continuing to keep the Men at Quarters in Expectation of an immediate Renewal of the Action; so that we did not begin to refit, till we came again to the Starboard Tack, and joined the Admiral. We were also under other singular Disadvantages, which retarded our refitting, when it did commence.—The Boatswain was killed in the Action, which must be allowed to be a capital Loss on such an Occasion, in the Repair of Sails and Rigging, those being in his particular Department. I was deprived of all Use of Three of my Lieutenants; for One was wounded in the Action, and Two were so extremely ill, that, notwithstanding the greatest Anxiety to be upon Duty during the Action, they were absolutely incapable of coming upon Deck. It unfortunately happened too, that there was not one Person on board the *Formidable*, either Officer or Seaman, who was in her when she was fitted out, or knew how the Boatswain's Stores were stowed. Having all these Difficulties to struggle with, we could not have refitted the Ship so soon as we effected, if I and my Officers, with the Men, had not all submitted to the most fatiguing Exertions, without the least Remission, till late at Night; nor could the Business of the Repairs have been properly directed, if, by my Desire, Captain Bazeley had not, after the Action, left the Quarter-deck, to attend on the Forecastle, where our principal Damage was received, and by his personal Activity and Superintendence there, endeavoured, as far as was possible, to prevent the Inconveniencies from the Loss of the Three Lieutenants and the Boatswain.

Some have attempted to make use of the Circumstance of the *Formidable's* wearing twice, and sheering out of the Way of other Ships, to my Disadvantage; and to persuade the World, from her being so far manageable in this Respect, that she was manageable for every other Purpose; and therefore, that this was a Proof of her not being so disabled in her Sails and Rigging, as I represent. But I appeal to the Experience of Sea-Officers, whether a Ship, with any Sail set, in moderate Weather, will not easily wear, or when going large, as easily sheer out of the Way of other Ships, though not able to keep Way with another Ship carrying more Sail than she is capable of setting, which was the Case of the *Formidable* with respect to the *Victory*.

Another adverse Attempt has been to shew the Position of the *Formidable*, when she became to Windward of the Admiral, to have been such, that by bearing away, she might at any Time have fetched into her Station. One or Two of the Officers of the *Victory* have accordingly placed me in or near the Wind's Eye of my Station, saying, that they saw me almost on the *Victory's* Beam. But none of them pretend to have set the *Formidable* by Compass; and they have been most positively contradicted by Captain Bazeley, and the Master of the *Formidable*; both of whom have testified, that she was left by the *Victory* at the Distance of Three Miles, and about Three Points on the *Victory's* Quarter, and One Mile to Windward of her Wake, which, together, throws me a Mile and a Half astern of my proper Station in the Admiral's Wake. They will be confirmed in this by my other Officers, and are more likely to be accurate in their Observation; because it was their Business to regulate the Motions of my Ship by those of the *Victory*, and they had my Orders to keep the latter a little open on the former's Lee-bow; whereas those, from whom they differ so widely, had no particular Reason to be nicely attentive to the relative Position of the Two Ships. Captain Marshal also, who appears to have been generally very accurate in his Observations, corroborates the Position of the *Formidable*, as described by my Officers, where he explains the relative Situation of his own Ship, in respect to the *Victory* and *Formidable*, when the Fox was sent with the Message to me. But what still further exposes the Extravagance of placing me in the Wind's Eye of my Station,

is, its being contradicted by Admiral *Keppel* and Rear-Admiral *Campbell*. The former is very vague in describing my Position. But as nearly as I can understand him, his Remark from the *Couch* does not tend to make me more than Four Points on the *Victory's* Weather-quarter; which, in Effect, agrees with Mr. *Campbell's* Account. Such being their Idea of my Position, it differs only one Point from the Account of my Officers; for the latter place me Three Points on the *Victory's* Weather-quarter, and it imports little to my Defence, which are most correct, when it is considered, that whether I was Three or Four Points on the *Victory's* Weather-quarter, I was, in either Case, far astern of my Station in the Admiral's Wake, and consequently, could not fetch up to it, except the *Victory* had shortened Sail, or till I was able to set more Sail than the *Victory*. It will scarce be objected, that I should have bore down into the Admiral's Wake before I had got up to the Length of my Station. But lest it should, I submit to the Court, that, as the Admiral did not bring to, but was constantly increasing his Distance, it was Officer and Seaman-like to keep to Windward of my Station, till I could get near the Length of it, and was able to preserve it when recovered. The Course I steered to reach the Length of my Station, if it could have been effected, would have brought me to within Half a Mile to Windward of it; and bearing down into the Admiral's Wake sooner, would have been both an Interruption to the Ships already formed, and acting contrary to the Signal for the Line then flying, which, being more commanding than the other, troubled it.

I have been so long in vindicating myself, against the Charge of Disobedience, imputed to me, for not being able to keep my Station according to the Signal for the Line, that I am very unwilling to trouble the Court with any other Remarks on this Part of my Case. But the unrelenting Invention and Ingenuity of my Enemies compel me to request a little further Indulgence on the same Point. From the Purport of some Parts of the Evidence, I can plainly see, that it is intended to lead the Court to consider me as the Cause of increasing my Distance from the *Victory*.

One Mode, of encouraging such a Supposition, is, that we continually kept close to the Wind, whilst the *Victory* was going large. But the real Fact is far otherwise. The Course of the *Formidable* was South the whole Afternoon, which was a Point or Two from the Wind. Our Log so states the Course; and it will be corroborated by the Testimony of my Officers. The *Victory's* Log falsely represents her to have laid to from One to Four o'Clock; and this Falshood was acknowledged by her Master on the late Trial. But during the rest of the Afternoon, her Log describes her to have steered South, Two Points from the Wind, till Seven in the Evening, when she was made to go South South East Two Miles, and afterwards to haul close to the Wind. This shews, that we steered the same Course as the Admiral; and so furnishes an Answer to the vague and contradictory Account of our always hugging our Wind. The Truth is, that we never kept close to the Wind, but always steered with the Admiral in the same Direction, a little under our Lee, which led us after him on the same Course with him, and without altering our Position from him, except by an Increase of Distance; and even, if we had been inclined to hug the Wind, as is suggested, the bad State of our Braces and Bowlines would not have allowed it. The nearest, we kept to it, was a short Time after the Admiral's passing us to Leeward, which was done, as I have mentioned before, that the Red Division, when they passed under our Stern to occupy the Rear, might have Room to effectuate their Movement, without any Interruption from the *Formidable*.

Another Objection, aiming at the same Conclusion, is deduced from a Comparison of the *Victory's* Log with the *Formidable's*, as to the Rate of sailing. The Rate marked in the *Formidable's* Log, from Four in the Afternoon, is, for the first Hour, Two Knots Two Fathoms; from Five to Six, Three Knots; and from Six to Seven, Three Knots Four Fathoms. The *Victory's* Log for the same Hours is uniformly Two Knots each Hour. From this Difference the Argument attempted is, that my Ship out-failed the Admiral's; and therefore that it was my Fault, if I did not keep up to the Length of my Station. On the Supposition, that the Two Logs were accurately marked, and that there was no Evidence to impeach their Correctness, I am not afraid to acknowledge, that there would be Force in this Reasoning. But it would be a dangerous Example, if Courts Martial should give implicit Credit to the marking of Log-books; more particularly, when the Attention is necessarily so much otherwise engaged, as it must have been at the Time in question, when we had been in Action with the Enemy, and still continued in Sight of them for further Engagement. A Man must be little accustomed to naval Engagements, who in such critical and busy Moments expects great Accuracy in marking either the Rates of a Ship's sailing, or any other Particulars; and what Commander of a Ship would be safe, if his Life and Honour were to be decided upon by such an uncertain and fallible Test? Former Courts Martial have been so aware of this, that, though it is usual to call for Log-books, to inspect them, they are not in Strictness considered as Evidence; and so Admiral *Byng* was told at his Trial. But notwithstanding Log-books should for the present Purpose be

received as admissible Evidence, the Danger of being much influenced by their Contents will be the same; and in the particular Instance of the *Victory's* Log, besides the general Objection, many special Reasons occur to dissuade relying upon it. None have pretended, that her Log was hove, so that the Rate of sailing is mere guess. The Log describes the *Victory* to have laid to in the Afternoon of the 27th from One o'Clock till Four; during which important Hours, neither the Rate of sailing nor Course is marked. But the Master, and other Officers of the *Victory*, at the Trial of Admiral Keppel, and now, acknowledged that she did not once lye to in any Part of that Afternoon; and this Fact is also acknowledged by Admiral Campbell. The *Victory's* Log makes the second Time of hoisting the Signal, for Ships to Windward to bear down into the Admiral's Wake, Half an Hour after Four. But, though Exactness, as to the Time of hoisting this Signal the second Time, is of great Consequence to a proper Understanding of the Transactions of the Day, yet the Time is grossly mis-stated: For it has been proved by the written Minutes taken on board the *Arcturion*, and the concurrent Testimony of Captain Marshall, and his Purser, that the real Time was Thirteen Minutes after Six. Again, the *Victory's* Log mentions, that the Signals, for the *Prince George* and *Bienfaisant* to chase the Three French Ships, were made at Four in the Morning of the 28th, and that they were called in at Nine, which supposes them to have been chasing Five Hours. But it is notorious from the Evidence given at the late Trial, and it appears from Captain Macbride's Evidence on the present one, that these Two Ships were called in within Half an Hour after the Signal for chasing was made. These Errors and Falsifications, whether innocently introduced or not, are sufficient to destroy the Credit of the *Victory's* Log-book. But there is yet a great deal more to impeach its Authority as to the Rate of sailing. Though the *Victory's* Log marks the Rate to have been uniformly Two Knots from Four o'Clock till Ten at Night, yet Admiral Campbell impliedly admitted, that the Rate was sometimes greater, when he said, he did not believe that the *Victory* went above Three or Three and a Half Knots any Part of the Time. This shews, that he considers her Rate of sailing as under-marked. The Log of the *Foudroyant*, which Ship the Captain proves to have been in her Station next astern of the Admiral from Three in the Afternoon, nearly corresponds with the *Formidable's* Log, as to the Rate of sailing; and therefore if the *Foudroyant's* is not over-marked, the *Victory's* must be under-marked. The Master of the *Victory* and others represent the Weather in the Afternoon of the 27th to have been squally and unsettled, though not blowing hard. But is it likely, that the *Victory*, under so much Sail as she is described to have had set, and during the Hours she was going Two Points from the Wind, should not go more than Two Knots an Hour? At Seven the *Victory* hauled her Wind, and kept close to it all Night, and till Eight carried the same Sail as when going from the Wind. But still her Log allows Two Knots an Hour, as if she went as fast with much less Sail by a Wind, as when she was going with more Sail from the Wind. All this shews, how unsafe it is to trust to the Rate of sailing marked in the *Victory's* Log-book. But I do not mean to have it understood, that the *Victory's* Log is the only inaccurate one. Probably the Rate of sailing in the *Formidable's* Log was marked with equal Incorrectness; and if we suppose her Log to have been as much over-marked as the *Victory's* appears to have been under-marked, this, with the Circumstance of the *Formidable's* bad Steering from the Want of Headsail, will account for the Difference between the Two Logs, and reconcile the Admiral's out-sailing me. At the same Time, I do not found any Argument in my Favour on so uncertain a Basis, as an Entry of the Rate of sailing made on guess and random Calculation, in the Hurry after an Engagement. My View is to resist any Argument on either Side from so dangerous a Source, and to draw the Attention of the Court to the strong Evidence of the correspondent Course of the *Victory* and *Formidable*, and that unerring Test, the Fact of the Admiral's increasing his Distance, notwithstanding my steering the same Course, and carrying all the Sail in my Power.

The next Article which I conceive to be intended as a Charge against me, after the Signal for the Line, and that for bearing down into the Admiral's Wake, the first Time of hoisting, is the latter Signal, the second Time it was made. Mr. Keppel, in his Defence on the late Trial, says, that this last Signal was made a Quarter before Five. His Log makes the Time Half an Hour after Four; and Mr. More, who assisted the Admiral's Secretary, spoke on the late Trial to the same Time as the Log. Mr. Campbell is still more early in point of Time, he having in Effect said, that the blue Flag was hoisted again within a few Minutes after being hauled down, which makes the second Time of hoisting the blue Flag to have been before Four. But all these Representations are now proved to be contrary to the real Truth; each being very remote from it, but Mr. Campbell's most extravagantly so. For fixing this Point beyond a Doubt, I am obliged to Captain Marshall, his Purser, and the Mate of the *Arcturion*, examined at the late Trial; all of whom swear to the blue Flag's not being hoisted the second Time, till Thirteen Minutes after Six, and found themselves on the written Minutes taken at the Time; Captain Marshall, when asked the Question upon Oath, whether the blue Flag was flying between Thirty Minutes after Three and Thirteen Minutes after Six, adding an Answer in the Negative. This also is a very operative Detection of

of the false Statement of the Time by the Admiral and his Officers. It relates to a very material Signal, it being the first made for coming into the Admiral's Wake, which could have the least Application to me; and as it was the first Signal or Notice for enforcing my Compliance with the Signal for a Line, it demonstrates, that even the Admiral himself did not expect me or my Division to be in a Condition to get into our Station till after Six. That he did not look for me or my Ships sooner is also apparent, from his filling my Station with the Red Division, till more than Half an Hour after Five; even Sir Robert Harland's Captain having informed the Court, that it was not till that Time, that Sir Robert received the Message for quitting the Rear and re-occupying his proper Station. Whether the Position of the Vice of the Red's Division, whilst in the Rear, was or was not such as absolutely to exclude my Division, till the former had left it, is a Nicety scarce worth contending with Mr. Keppel; because its being occupied by Sir Robert Harland is not the Reason I give for being to Windward and astern of my Station; but I only advert to the Fact to corroborate, what I infer from the late Hour of the first enforcing Signal for calling me into the Line. In respect to my Conduct on seeing the Signal for coming into the Admiral's Wake, I obeyed it to the Extent of my Power. I repeated it, and I continued those Efforts for fetching the Length of my Station, in which I had been so assiduous before, that there was no Room for further Exertions. The former will be proved by my Officers, and it is indeed allowed by the Witnesses against me. What the Impediments were, which prevented the latter, particularly our Inability to set the Foretop-sail till between Seven and Eight, I have already explained at large.

In less than Half an Hour after the second Time of hoisting the blue Flag or Signal for bearing down into the Admiral's Wake, the Pendants of particular Ships of my Division were added to the blue Flag. These Pendants were repeated on board Captain Marshal's Ship at Thirty-six Minutes after Six; and immediately on being seen, they were repeated on board the *Formidable*. Had the Admiral thought the Ships of my Division in a Condition to come into their Station in the Line sooner, why did he delay hoisting their Pendants till so late an Hour? It is also observable, that the Pendant of the *Formidable* was not amongst those hoisted.

Next comes the Message to me from the Admiral by Captain Windsor in the *Fox*; and as my Enemies have made the supposed Disobedience of it so frequent a Topic of Accusation, it is necessary, that I should consider the Circumstances relative to it in a very particular Manner; in doing which I must be deluded by the most unaccountable Misapprehension and Error, if I am not able to falsify the Story about this Message almost from Beginning to End. To examine all its Parts with the Minuteness, which is requisite to disappoint the unwarrantable Inferences from it, I beg the Attention of the Court to the Time of sending the Message, the Time of its being delivered, and the Words of it.

Admiral Keppel, in his Defence on the late Trial, asserts, that he sent the Message at Five o'Clock. Captain Windsor, who carried it, and other Witnesses, have sworn even to an earlier Time. But they are all falsified by the concurrent Testimony of Captain Marshal, Mr. Graham his Purser, Mr. Cawsey Mate of the *Arcturion*, and the written Minutes of the Purser taken when the Signals were repeated;—Evidence, which Mr. Keppel himself cannot controvert with any Grace, after the great Encomiums he has so justly passed upon the extraordinary Accuracy of Captain Marshal in repeating Signals. If Captain Marshal, his two Officers, and the Minutes in Writing taken by his Direction at the Time, are to be depended upon, more than other Witnesses speaking from their mere Recollection, the Signal for the *Fox* to come within Hail of the *Victory* to receive the Message was not made till Thirty-two Minutes after Five, that is, above Half an Hour after it is represented by Mr. Keppel, his Officers, and Captain Windsor, to have been delivered. If Captain Marshal, whose Station was Three Miles to Windward of the *Victory's* Beam, is to be credited, Captain Windsor could not have less than that Distance to go before he could come within Hail of the *Victory* to receive the Message, and must have been Half an Hour in going to her; and the written Minutes, taken under the Direction of Captain Marshal, prove, that Captain Windsor did not arrive within Hail of the *Victory* in less than Half an Hour; for they take Notice, that the Signal for the *Fox* was hauled down at Three Minutes after Six. These Facts together demonstrate, that the Time of Admiral Keppel's sending the Message was, not at Five or a little before, but a little after Six.—Mr. Keppel, speaking on his Oath, has said, that he called the Frigate which carried the Orders to Sir Robert Harland to go to his proper Station in the Van, and which was the *Milford*, at the same Time that he called the *Fox* to carry the Message to me. This leads to fixing Five as the Hour of sending the Message by the *Fox*. But Admiral Keppel is most directly contradicted by Captain Marshal and his Purser, also speaking on Oath, and their written Minutes; according to which, the *Milford's* Signal was made Ten Minutes before Four, and hauled in Thirty-three Minutes after Four; but the *Fox's* Signal was not made till Thirty-two Minutes after Five, and not hauled in till Three Minutes after Six. In other Words, instead of Mr. Keppel's sending these two Frigates at or about the same Time, there was a Difference

of an Hour and a Half between dispatching them. This striking Error in antedating the Dispatch of the Message by the *Fox* one Hour and an Half, may, as I can plainly see, be convenient to the Plan of my Destruction. But how it is otherwise to be accounted for, is the Business of Mr. Keppel to explain. I hope, for his own Sake, that he confounded the *Proserpine's* Signal with the *Milford's*. The *Proserpine's* was hoisted Twenty-two Minutes after Five, and hauled in Two Minutes after Six; as appears from the same written Minutes, taken on board the Repeating Frigate. This brings the *Proserpine* and *Fox* within Hail of the *Victory* one Minute after each other. But, unfortunately for Mr. Keppel, the *Milford*, and not the *Proserpine*, was the Frigate sent with the Orders to Sir Robert Harland; nor can Mr. Keppel avail himself of the Apology I have thus created for him, without sacrificing the Credit of Captain *Windsor*, Captain *Berkeley*, Lieutenant *Bertie*, and those Officers of the *Victory*, particularly Admiral *Campbell* and Mr. *Rogers*, who have as positively fixed sending the *Fox* at a so much earlier Time in the Afternoon; nor without acknowledging the Truth and Accuracy of the Officers of the *Formidable*.

The Time of delivering the Message sent by the *Fox* is falsified in the same extraordinary Way as the Time of sending it. Captain *Windsor*, who carried the Message, swore at the late Trial, that he came within Hail of the *Formidable*, and delivered the Message to me nearly about Half an Hour after Five; and being questioned at the present one to the same Point, he repeated the same Words. But the Court is in Possession of that, which abundantly proves, that Captain *Windsor* is still grossly erroneous in speaking of Time. It is already shewn, that he did not receive the Message till after Six; and he allows he was Half an Hour in getting to the *Formidable*, which, without more, renders his Delivery of the Message to me at about Half an Hour after Five impossible. But other Circumstances concur to disprove the Evidence of Captain *Windsor* in a still greater Extent. He allows himself only Half an Hour to carry the Message. But the *Formidable* is proved to have been Three Points on the *Victory's* Weather-quarter, and Three Miles distant; and Captain *Windsor* acknowledges, that to fetch the *Formidable*, he made a Circuit, going to Leeward of all the Ships of the Center Division, which were formed astern of the *Victory*, and was forced to change his Tack. All this so increased the Space he had to traverse, that, though he went Six or Seven Knots, as he calculates, it must have required considerably more than an Hour before he could reach me. This postpones the Time of delivering the Message till between Seven and Eight in the Evening, and corresponds with the Account of my Officers; who are all positive, that the *Fox* did not come within Hail of the *Formidable* till near or about Sun-set, which, on the 27th of July, and in the Latitude of *Ushant*, where we then were, is a little after Half past Seven. Other corroborating Proofs that this was the Time I received the Message, are, that we had repeated the blue Flag the second Time of its being hoisted, which was at Thirteen Minutes after Six; and that we had also repeated the Pendants of particular Ships of my Division, which, by Captain *Marshall*, and the written Minutes taken on board his Ship, were not hoisted till Thirty-six Minutes after Six, a considerable Time before the *Fox* hailed us. It is further ascertained by the Circumstance of our not being able to bend our Foretop-sail till a little before Eight; in doing which, both Captain *Windsor* and Lieutenant *Bertie* observed us to be employed, whilst the *Fox* was near the *Formidable*. Thus, from the Evidence of Captain *Marshall*, whose most justly distinguished Accuracy as a Repeater of Signals the Court has heard such warm Encomiums upon, from the written Minutes taken on board his Ship at the Time; and from a Combination of Circumstances, not gleaned without great Labour and Difficulty out of the great Mass of Evidence on the late and present Trial; the Result is, that a Message sworn to have been delivered to me at Half past Five, was not really delivered till Half past Seven. How material the Error of Two Hours in stating this Message is, will strike every one who hears me, when it is recollected, what an Influence Time has on the supposed Import of the Message. If the Message was delivered at Half an Hour after Five, it might not have been too late to re-engage, had such been the Admiral's Intention, and other Circumstances independent of Time did not obstruct him. But at a Quarter of an Hour after Seven in the Evening, that is, a Quarter of an Hour before the Message reached me, it is confessed by Mr. *Campbell* to have been so late, that the Admiral had then given up all Thoughts of re-engaging.

There is almost as great a Disagreement about the Words of the Message, as about the Times of its being sent and received. According to Captain *Windsor*, Lieutenant *Bertie*, and the Officers of the *Victory*, the Message delivered to me imported, not only that the Admiral wanted the Ships of my Division to come down into his Wake; but further, that it extended to me as well as the Ships of my Division, and that he waited for me to renew the Action. The first Part of the Message I acknowledge receiving. But I deny, that the Message, repeated to me, mentioned either me, or the waiting for me to re-engage; and the few on board my Ship who were present when it was delivered, agree with me in their Account of it; for they say, that it was simply confined to the Admiral's wanting the Ships of my Division.

On this Contrariety of Evidence about the Words and Import of the Message, it is the Office of the Court to decide, who are best intitled to Belief, and which of the two Representations carries with it most Appearance of Probability.

But it may not be improper to submit to the Court some few Considerations, against yielding to the seeming Weight of Evidence, for the Terms of the Message, as it is stated against me.

The Witnesses, who have spoken so positively to mentioning that the Admiral waited for me to re-engage, stand convicted of the grossest Errors in their Relation both of the Times of receiving the Message, and of the Time of delivering it; in the former more than One Hour; in the latter, more than Two Hours. They own too, that they speak the Words entirely from Memory, never having committed them to Writing. But, how can the Court safely trust to the frail Memory of Persons thus exceedingly erroneous, as to the Time of the Message, for the Words of it, in Preference to those against whose Testimony no such Objection lies?

The Admiral was not waiting for me; nor had he been waiting any Part of the Afternoon; but, as Admiral Campbell acknowledges, the *Victory* had been the whole Afternoon under the same Sail, which was more than the *Formidable* could carry, till her Foretop-sail was bent, which was not till about Eight o'Clock. How improbable is it, that Admiral Keppel should send me a Message to tell me, that he was waiting for me, when he was not waiting! As it has been asserted, that he had been waiting for me and my Division the whole Afternoon to re-engage, and so early as Half an Hour after Four was become wearied with fruitless Expectations, what was the Reason that no enforcing Signal was made, either for me or my Division, till Thirteen Minutes after Six? Why were the Signals for particular Ships of my Division postponed till Thirty-six Minutes after Six? As I judged, it would have been unreasonable to expect, that my Division, which had suffered so particularly in the Action, and were latest out of it, should be fit to take their Stations in the Line sooner; and from his Conduct in not making their particular Signals till more than Half an Hour after Six, it seems as if the Admiral was of the same Opinion. If the Admiral was dissatisfied with not seeing these last Signals immediately complied with, why did he not express his Disappointment by going a Step further, and making Signals for them to make more Sail? In respect to my Ship, the particular Signal for it was never made. But if my being out of the Line was so unaccountable to him at Half an Hour after Four, why did he omit to make my particular Signal Two Hours after, when he called in the Ships of my Division? If he was so impatient to re-engage, and I was the Obstacle, would not making my particular Signal have been a more expeditious Way of informing me, than sending a Message which took up more than Hour in carrying? If he meant to be delicate, as he professes, would not the silent and disguised Censure of a strong Signal have been equally expressive, yet more delicate than the harsh and coarse Language of a trimming Message? If the Object of the Message to me was to renew the Engagement, why was he so long before he sent it, that it could not reach me till considerably after the latest Time in the Evening fixed by himself and his Friends for another Action?

Other Circumstances, which operate against the Idea of an Intention to re-engage in the Afternoon of the 27th, and consequently against a Message to that Effect, might be enlarged upon; such as suffering the Van Division to occupy my Post next the Enemy till after Five;—the late Hour of the Red Division's resuming their proper Station in the Van;—the Improbability of meaning to renew the Engagement with my disabled, unfitted, and still dispersed Division, instead of Sir Robert Harland's fresh and collected Ships;—and the incomplete forming of the Center Division even after Six. But it would be almost endless to pursue these Topics; and therefore I hasten to a more decisive Indication of the designed Import of the Message; I mean, Admiral Keppel's own Comment.

In Admiral Keppel's public Letter about the Engagement, he declares, that he allowed the *French* to re-form their Line in the Afternoon of the 27th, with an Expectation that they would try their Force with us the next Morning. Is not this Language an Avowal by Mr. Keppel, that the next Morning was the Time he had in View for re-engaging? The Log-book of the *Victory* is of the same Tendency; for it takes notice of preparing to renew the Engagement at Day-light the next Morning, but is without one Syllable about renewing the Action the preceding Afternoon. When it was first inserted in the public Prints, that the Message to me was to signify, that the Admiral waited for me and my Division to renew the Action, I appealed to Mr. Keppel to protect me against so cruel a Misrepresentation; asking him, whether it was possible that he ever should send me such a Message; and though he declined doing me the full Justice I expected, yet he would not say that he had sent such a Message, but replied in these remarkable Terms, I am told that such Words were used. But if he had been convinced that such was the Message, would he have hesitated avowing it, would he have referred to the Report of other Persons? His Language upon Oath is of the same undecided, ambiguous Kind. He will not

say that he sent that Message. He cannot trust to his own Remembrance of it. He cannot exactly recollect the Words. He leaves the Labour and Hazard of Recollection to his own Officers; particularly to Admiral *Campbell*, whose ill Offices I have experienced in a great Variety of Instances. But whatever the Terms of the Message were, whether it was for my Division to come into their Stations, or whether it was that the Admiral waited for me and my Division to renew the Engagement, I trust, that I shall be found to have done all that could be expected at the very late Hour I received it. Whatever might be the Admiral's Intention when he sent the Message to me, it did not come to me till after that Time was passed, at which Rear-Admiral *Campbell* confesses, that the Admiral had relinquished every Idea of a further Engagement till the next Day. Convinced that a Night Engagement was not the Object of the Admiral, it only remained for me to continue my Efforts for completing the Repairs of the Rigging, more especially in setting my Fore-top-sail; in which I was so successful, as to get into my Station in the Line, and to be quite ready for Action again before Day-light in the Morning.

As to sending a Message to inform the Admiral of my Inability to get the Length of my Station, making a Signal of Distress, or shifting my Flag, they did not strike me at the Time as either necessary or applicable to the Circumstances under which I acted; nor do I yet know of any Reason, which, on a Review of my Situation the Evening of the Day of the Engagement, should induce to such an Opinion. But I have already expended so much Time in my Observations on the Subject of the Message, that I find myself forced to postpone the particular Reasons, which may evince the Propriety of my not adopting either of those Measures, till the Close of the Examination of my Witnesses, when I hope to be indulged by the Court with a Hearing of such further Remarks, as shall then appear necessary for my final Justification.

After the Message, I know of only Two other Articles hinted at against me, which require the least Notice; and in respect to them very few Words will be necessary.

One is, that I did not carry my distinguishing Lights the Evening of the 27th.—But my Witnesses, particularly some whose Business it was to attend the Lights, will prove the Fact of my carrying all of them. When this Matter was first questioned, I really thought it probable that the Top-light was not kept burning; because I recollect being told of some Difficulty about it from a Wound the Lanthorn had received in the Action, and that I observed it was of no great Consequence. But I gave no Orders to countermand any of the Lights; and always took for granted, that my Stern-light was kept burning the whole Night.

The remaining Article relates to the Situation of my Ship at Day-break the Morning of the 28th.—Sir *Charles Douglas*, from an Observation he made at the Dawn of Day, conceives, that he then saw my Ship greatly ahead of my Station in the Line. But, though I have not the least Doubt that he says what he believes to be the Truth, yet I am persuaded he must have mistaken some other Ship for mine. In the Course of the Trial, I shall examine some Witnesses to prove, that I really was astern of the Admiral at the Time when it is supposed that I had got ahead of him.

I now draw near to a Conclusion for the present, having only to remind the Court, in what Light Admiral *Keppel* viewed my Behaviour on the two Days to which the Court's Inquiries are limited, before the Commencement of those Differences from which the present Trial originates.

The Day but one after the Action, I visited the Admiral on board the *Victory*. He received me with his usual Marks of Regard, Friendship, and Confidence, without the most distant Hint of being dissatisfied with the least Part of my Conduct. On the contrary, he communicated to me the Draught of a Letter he intended to send to the Admiralty, either the same, or one very little different from that afterwards published in the *Gazette*. He discoursed with me on several Parts of the Letter; and when he came to the Part in which he praises Sir *Robert Harland* and me by Name for our spirited Behaviour, he said, that he thought it best to mention it in a general Way, without particularizing; and this came from him in such a Manner, that I thought he alluded to my Ship's having been so much more engaged, and having suffered so much more, than Sir *Robert Harland's*. Is it possible, that Admiral *Keppel* should be capable of so much Duplicity, as to have thus commended me in a public Letter in the same ample Manner as Sir *Robert Harland*, and to have thus communicated with me on the Subject of it, if he had then entertained the least ill Opinion of any Part of my Conduct? In this Court, Mr. *Keppel*, being on his Oath, endeavoured to qualify his Commendation of me by narrowing it to my Behaviour in Time of Action, and spoke as if his Letter was so expressed. But the Letter itself contains no such Qualification; and I did not wonder to see him under Embarrassment, when he so disingenuously endeavoured to controul the Effect of his open Praise, by having Recourse to secret and mental Reservation. Soon after we arrived at *Plsmouth*, Mr. *Keppel* received a Letter from the Secretary of the Admiralty, which contained his Majesty's Approbation of my Conduct repeated in Mr. *Keppel's* own Words, and expressed to be

founded upon his Representation. This Letter was also shewn to me by Admiral *Keppel*. Before we left *Plsmouth* for the second Cruise, he wrote a second Letter to the Admiralty, in which he once more includes me in the Praise and Commendation of the Officers under him.

After such unqualified and deliberate Acts of Approbation of my Conduct on the 27th of last *July* from Mr. *Keppel*, as I have here enumerated, it will be difficult for him to account for his present Censures of my Conduct on the same Day, without either fixing on himself a Charge of the greatest Duplicity, or of suffering his Evidence on Oath to be influenced by the Spirit of Anger and Revenge.

Here, Gentlemen, I close my Defence for the present, surrendering both my Life and Honour into the Hands of the Court, with a full Assurance, that I shall meet with the same Protection from you, as each would expect from his Brother Officers in a like Situation; and that you will not allow Truth and Innocence to be made a Sacrifice to the Clamour and Noise of Party, or to the prejudiced Testimony of Persons avowedly acting from the Dictates of private Malice.

Gentlemen, I will detain you with only one Sentence more.—My Mind sees no Medium between Life with entire Honour, and Death without; and I ardently wish, that your Judgment, be it what it will, may be directed by the same Alternative.

SIXTEENTH DAY.

THURSDAY, the 29th of APRIL, 1779.

THE Court met according to Adjournment.
The Prisoner was brought in, and Audience admitted.

Admiral Sir Thomas Pye sworn.

Prisoner:

To authenticate every Thing relating to Signals and Time, is the Occasion of my troubling Sir *Thomas Pye* to attend, to give Evidence relative to a Transaction at the last Court-martial, upon a Point that, I dare say, the Court will think very essential for me to investigate; it is relative to a Paper of Signals which Sir *Thomas Pye* delivered in to that Court, which remains in the Hands of the Judge Advocate, with the Minutes of that Trial; and upon that Paper I propose to ask Sir *Thomas Pye* a few Questions.

Q. Whilst the late Court-martial was sitting, did you, as President, receive from Captain *Marshall* a Paper of Signals, which you afterwards delivered into that Court?

A. To the best of my Recollection, there was a Paper of Signals delivered to me, as President, which I handed to the Judge Advocate.

Prisoner:

I called upon Sir *Thomas Pye* merely to authenticate that Paper.

A Member:

The Judge Advocate is the proper Person to authenticate it.

Judge Advocate:

I have the Matter strong upon my Recollection. This Paper was delivered into the Hands of Sir *Thomas Pye*, as he told me, by Captain *Marshall*. The Morning after, Sir *Thomas* mentioned to me that he had received a Paper of Signals, the Contents and Merits of which he was ignorant of. Finding it was a Paper written by the Mate of the *Arctus*, I thought it proper it should be shewn to him when he came before the Court for Examination.—It was so done.—The Mate was asked if it was his Hand-writing; he authenticated it upon Oath, and I wrote upon it at the Instant, "Received from *William Cawsey* in Court;" adding the Initials of my Name, and the Day when, viz.

19th *January* 1779. Receiving it as an original Paper, I transmitted it to the Admiralty; their Lordships have annexed it to the Minutes of that Court-martial, and of course it comes before you. Captain *Marshall* himself looking upon the Paper, on his Examination since the Proceedings on the present Trial, said it was the same that he had delivered to Sir *Thomas Pye*.

Judge Advocate sworn.

Court asked,

Q. Is the Paper of Signals annexed to the Minutes of the Proceedings at the Court-martial held on Admiral *Keppel*, the same Paper that was then delivered into Court by *William Cawsey*, Mate of the *Arctus*?

A. It is the identical Paper I received in Court from *William Cawsey*, who, upon Examination, acknowledged it to be his Hand writing. I made a Notation upon the Paper, of my Receipt of it in Court, the Instant it was put into my Hands.

Prisoner's Questions:

Q. Was that Paper sworn to by Mr. *Cawsey*, Mate of the *Arctus*, to be his Hand-writing?

A. It was.

Q. Did he swear before that Court, that it was a true Copy of the original Minutes that were made on board the *Arctus* on the 27th of *July* last?

A. His Answer upon that Occasion was; "The Paper produced is a Copy I took from the original Entry in Pencil."

Q. Did he swear that he copied it from the original Minute-book himself in the Evening of the 27th *July*?

A. He swore that he did.

Q. Did he swear that the original Minute-book was afterwards lost?

A. He swore that the original Minute-book was lost, and that the Paper produced was the Copy from it.

Q. Did he swear that he delivered that Paper to Captain *Marshall*?

A. He swore that he gave it to Captain *Marshall*; that the Book itself was missing; that Captain *Marshall* applied to him; and that he gave it to Captain *Marshall*.

Q. Was

Q. Was it made appear to that Court, that the Paper was received from Captain Marshall by the President, and afterwards delivered into Court, and there authenticated?

A. That was not publicly and particularly spoken to, I think, in Court; it was clearly and perfectly so understood, both by Sir Thomas Pye and myself—What others understood it to be, I do not know; but it was perfectly understood by Sir Thomas Pye and myself, that it was the Paper delivered in to Sir Thomas Pye's Hands by Captain Marshall.

Q. At what Time does it appear by that Paper, the yellow Pendant at the Mizentopmast-head was let fly; being the *Milford's* Signal, and when was it hauled down?

A. It stands in the Paper hoisted Fifty Minutes past Three—Pendant yellow, Mizentopmast-head—Hauled down Thirty-three Minutes past Four.

Q. At what Time was the yellow Pendant let fly at the Maintopmast-head, being the *Proserpine's* Signal, and at what Time was it hauled down?

A. It does not appear by the Paper what Uses the Signals were for; but there is such a Signal marked hoisted Twenty-two Minutes past Five—Yellow Pendant—Maintopmast-head hauled down Two Minutes past Six.

Q. At what Time was the yellow Pendant at the Starboard Maintopmast Yard-arm, being the *Fox's* Signal, let fly, and when was it hauled down?

A. At Thirty-two Minutes past Five a yellow Pendant, Starboard Maintopmast Yard-arm—hauled down Three Minutes past Six.

Q. At what Time was the Blue Flag at the Mizzen-peak first hoisted; being the Signal for the Ships to Windward to bear down?

A. Without speaking to the Uses of the Signal, it appears by the Paper to have been hoisted Twenty-four Minutes past Three, at the Mizzen-peak, and hauled down Thirty Minutes past Three.

Q. Does it appear that the blue Flag was again hoisted at the Mizzen-peak any Time till Thirteen Minutes past Six?

A. The blue Flag at the Mizzen-peak was hoisted at Twenty-four Minutes past Three; it was hoisted again at Thirteen Minutes past Six; and it does not appear when hauled down.

Sir William Burnaby, Bart. Captain of the *Milford*, sworn.

Q. When you received Orders from the *Victory*, on the Afternoon of the 27th of July, was any other Frigate near to the *Victory* at that Time receiving Orders?

A. None that I saw or heard of.

Q. Did you take Notice of the Condition of the Rigging and Sails of the *Formidable* any Time that Afternoon; and what Observations did you make?

A. They appeared to me to be very much disabled during the whole Course of the Afternoon; I observed her particularly about an Hour after coming out of Action, as near as I can recollect.

Court asked,

Q. At what Time did you leave Admiral Keppel to go to Sir Robert Harland?

A. As well as I now remember, it was about Three Quarters past Four.

Q. At what Time did you join Sir Robert Harland?

A. In a very few Minutes after, rather before Five o'Clock.

Q. What general Signals were flying on board the *Victory* at the Time you left her?

A. I do not particularly remember; but I think the Signal for the Line of Battle was one of them.

Q. Did you perceive it on board the *Formidable* then, or when you took Notice of her Sails, or on any other Time that Afternoon?

A. It does not now occur to me that I did—I was at a great Distance from her.

Q. Was the *Milford* the Frigate appointed to attend the Vice-Admiral of the Blue's Division?

A. She was.

Q. Where was the *Milford* for the most Part of the Evening of the 27th, after the Fleet was on the Starboard Tack?

A. A good way to Leeward, and ahead of the *Formidable*; being called down to the *Victory* at the Time I have already mentioned. From that Time it might be rather after Seven when I got into my Station.

Q. What was the Condition of the *Formidable* at the Time you got into your Station, with respect to the Sails and Rigging?

A. She appeared to be still much damaged in both; my principal Attention was to the *Victory*.

Q. What was the Situation of the *Formidable*, with regard to the *Victory* at that Time?

A. She was a good Way astern, and pretty well to Windward.

Q. How near do you suppose you were then to the *Formidable*?

A. I do not exactly recollect; I might have been a Mile or more.

Q. Do you know what general Signals she had out at that Time?

A. I do not.

Q. Did you, at any Time in the Afternoon, see the blue Flag at the Mizzen-peak on board the *Victory*?

A. I certainly must have seen it; but I do not recollect so as to answer that Question positively now.

Q. Did you see the blue Flag at any Time on board the *Formidable*?

A. I have said that I do not recollect to have seen it.

Q. Did you see the *Fox's* Signal made at any Time in the Afternoon to speak with the Admiral?

A. No, I did not.

Q. Did you see her at any Time bear down to the Admiral?

A. I do not recollect to have seen the *Fox* the whole of the Afternoon, after coming out of Action.

Q. Do you recollect seeing any Frigate come near the *Formidable* in the Evening, and at what Time?

A. No, I do not.

Q. Did you take any Notice of the *Formidable* in the Course of the Night?

A. I do not recollect to have taken any particular Notice during the Night. I left Orders for my Ship to be kept as near to her Station as possible.

Q. Do you know whether the *Formidable* had any distinguishing Lights during the Night?

A. I do not recollect to have seen any.

Q. Was you upon Deck at Day-break in the Morning; and did you see the *Formidable*, and where was she with respect to the *Victory*?

A. I cannot speak certainly with respect to the Situation of the *Formidable*; my Signal was soon made to go on board the *Victory*, which I did;

and therefore I did not take particular Notice of the *Formidable*.

*Discharged from further Attendance.
Withdrew.*

Captain Bazely called in again.

Q. How near was the nearest of our Ships to the *Formidable*, ahead and astern, at the Time of our going into Action?

A. The nearest Ship ahead a good Half Mile, and the Ship next astern near a Mile, to the best of my Judgment and Recollection.

Q. After the *Formidable* was wore in the Rear of the Enemy, were there any Preparations for renewing the Action on board the *Formidable*?

A. Officers and Ship's Company were immediately ordered to Quarters.

Q. How near were we at that Time to the Enemy?

A. Random Shot.

Q. Were there any Shot fired at the *Formidable* at that Time?

A. After the Helm was aweather, and the Ship was in the Act of wearing, Two or Three Shot were fired at her from the sternmost Ship of the Enemy's Rear.

Q. From the Circumstances you described relating to the *Formidable*, when you was examined by the Court the other Day, I would now ask you whether, under these Circumstances, whatever Messages might have been sent to the *Formidable*, or whatever Signals were made, was it possible for the *Formidable* to have got into her Station in the Line?

A. It was impossible, without the Admiral had shortened Sail to give us that Opportunity.

Q. Was it safe to have set more Sail upon the Foremast sooner than it was done?

A. By no Means safe in any Respect whatever.

Q. Can you give an Account of the Damages? If you can, produce them.

A. I have them in Writing, which I beg to refer to.

The Judge Advocate read the Papers, of which the following are Copies.

Formidable's Damages by Shot, to her Masts and Hull, 27th July, 1778.

Bow-sprit.—Shot six Feet from the Cap, on the under Part, four Inches through.

Foremast.—At the third Wounding on the aft Side, two Inches deep; between the fifth and sixth Wounding nine Inches deep; six Feet above the Forecastle a large Shot, twenty-two Inches through, which discovered the Mast to be perfect Touchwood, and was in Danger of going over the Side, having no Stays, and only one Shroud to Windward; the Wound was judged to be so bad by the Officers of the Yard, that they would condemn him at *Plymouth*; but the Admiral desired, if possible, to have him fished and cased, that he might be ready for Sea the sooner.

Foreyard.—Three Inches and an Half deep on the Starboard Arm, and a slight Wound on the Larboard.

Foretopmast.—Shot three Feet below the Cap, three Inches and an Half through, and another slight Wound.

Maintopmast.—Shot through with a Double-head Shot below the Cap, which took away more than Two-thirds of the Mast.

Maintopmast-yard.—Seven Feet from the Arm, four

Inches and an Half deep, and a slight Wound on the Slings.

Mainyard.—A slight Wound six Feet from the Slings.

Mainmast.—Under the fifth Wounding, six Inches deep.

Mizenmast.—Little below the Hounds, shot through with a large Shot, which took away Two-thirds of the Diameter, and could not be secured by fishing; which was the Opinion of the Officers of the Yard at *Plymouth*.

Mizenyard.—Shot in two Places.

Forecastle.—Fife-rails and David-chock shot to Pieces, many Shot in the Starboard Side, and three large Shot under Water; one Lower-deck Port shot clear away, and others wounded. Gallery-fishes ditto.

Fore-channel.—Three Chain-plates shot away.

Main-channel.—Two ditto.

Mizen-channel.—One ditto.

Fixed-block, in the Side, for the Fore-sheet, shot to Pieces.

JOHN BICKERSON, Carpenter.

The Witness added to the foregoing Account, that the Number of large Shot in the Hull were Seventy-five, according to the best Account he could collect.

State of the Formidable's Sails and Rigging after the Action of the 27th July, 1778.

Sails.

The Jib and all the Stay-sails before the Foremast, with all the Geer belonging to them, was all cut to Pieces—Hanging over the Bows, were cut away—The Foretop-sail was torn all to Rags, and rendered totally useless—The Foresail very much torn, and an infinite Number of Shot-holes in it, so as to be of little or no Use; and at *Plymouth* Yard was found irreparable—The Stay-sails between the Masts were likewise cut all to Rags, and rendered useless—The Main-top-sail had many Shot-holes in it, and much torn—Foot-rope cut, so as to make it dangerous to set the Sail properly, had the Maintopmast been in a proper State—Mizentop-sail very much cut and torn, so as to be obliged to be shifted as soon as the Foretop-sail was set.

Rigging about the Foremast.

The Ropes in general about the Bow-sprit, Fore and Spring-stay shot away—Only one Fore-shroud left standing on the Weather-side, and three to Leeward; several of them cut in two Places—Only one Pair of Foretopmast-shrouds standing on the Lee-side, and none to Windward; with all the Back-stays shot away—Foretopgallant-stay and Shrouds, Braces, Bowlines, and all the Running-ropes in general about the Foremast, with the Foretacks and Sheets on both Sides, shot away.

Rigging about the Mainmast.

Main-spring-stay shot away—Only two Main-shrouds to Windward standing, and four to Leeward; several of them cut in two Places—Main-topmast-stay and Spring-stay, all the Weather Back-stays, with only two Shrouds to Windward left standing—Maintopgallant-stay and Shrouds, all the Running-ropes in general (one Main-brace excepted), Main tacks and Sheets on both Sides, shot away.

Rigging about the Mizentopmast.

Three of the Weather Mizentop-shrouds, and most of the Running-rigging, shot away.

Q. Do

Q. Do you deliver those Accounts as to your own Knowledge?

A. I do; because there was no Part of the Ship I did not attend minutely to, with the Assistance of the Master, after she arrived at *Plymouth*.

Q. Were any of the Lieutenants of the *Formidable* so ill as to be unable to come upon Deck on the 27th of July?

A. The fifth and sixth Lieutenants were so ill as not to be able to go to Quarters; the second Lieutenant was wounded in the Action, and the Boatswain was killed. The Loss of the Assistance of three Lieutenants and the Boatswain retarded the refitting of the Ship, and that very sensibly; having but very few petty Officers in the Ship that ever were in the Service before, and no Man in the Ship that knew where any Part of the Boatswain's Stores were stowed. There were Fourteen *Greenwich* Hospital Pensioners, Nine Men and a Midshipman from the *Hawk* Sloop, Three Quartermasters, and, I think, one Master's Mate, in the Ship, which were all that were on board when the Ship fitted out at *Chatham*.

Q. At what Time were Orders given on board the *Formidable* for preparing the Ship for Action again on the Morning of the 28th; and when did the Drum beat to Arms?

A. At Two o'Clock in the Morning; and when the Officers had reported their Quarters, we bore up and took our Station in the Line, astern of the *Victory*, before the Day was fairly opened.

Q. Did the Men on board the *Formidable* behave with great Spirit and good Order?

A. Every Praise is due from me to the Officers and Ship's Company in the *Formidable*, for their spirited Behaviour in the Action, and their Attention to their Duty in refitting the Ship, without having one single Moment to refresh themselves till after the Ship was refitted, at Ten o'Clock at Night.

Q. Was any Liquor given to the Men till after the Work was done; and at what Time was that, and how much?

A. None, to my Knowledge, till after Ten o'Clock at Night, when the Vice Admiral ordered each Man to have Half a Pint of Wine, as an Encouragement for the many Hours they had laboured in refitting the Ship, and as a Mark of his Approbation for their good Behaviour.

Q. Did I express any Anxiety, during the Afternoon and the Night, for getting the Ship refitted, and for getting up with the Admiral?

A. Very anxious both in the Afternoon and Night; and to my Knowledge, till after Ten o'Clock the Vice Admiral was never off the Deck for Fifteen Minutes, from after the Time the Fleet tacked together at Ten o'Clock in the Morning, till Ten o'Clock at Night. I never left the Deck myself, therefore I can speak to it positively.

Q. Did I desire you, in the Afternoon, to go upon the Forecastle yourself, and why?

A. I received the Vice-Admiral's Directions to go forwards on the Forecastle to attend the refitting of the Fore part of the Ship, and he said he would undertake himself, assisted with two Lieutenants, to attend to the Rigging and other Matters that wanted refitting about the Main and Mizzen Masts. At Times I went aft, from the Forecastle to the Quarter-deck.

Prisoner had no further Questions to ask.

Court asked,

Q. You have said, that when the *Formidable* first came into Action, there were no Ships very near you, ahead or astern. How long was you in Action before you perceived any Ships near

you, and what were their Names, if you recollect?

A. I recollect one Ship passing under the *Formidable's* Lee, when in Action, or going down along the *French* Line; but her Name I do not know, nor do I know how long we had been in Action, nor how long we continued in Action afterwards.

Q. Do you suppose that to have been one of the head or stern Ships you have mentioned before, and were there any Ships nearer to you than those you have mentioned ahead and astern?

A. I do imagine the Ship that passed under the *Formidable's* Lee, to be one astern of her when she began the Action; and what makes me think so is, she came up with her Foretopgallantails set, and all her Sails except her Mainsail—we having our Mizentopgail aback, and all the Stayfail Sheets eased off between the Mainmast and Foremast. When we first began the Action, the *Ocean*, to the best of my Judgment, was upon the *Formidable's* Lee-bow, and a little ahead withal, near four Cables Lengths, as near as I can carry my Judgment, and the Enemy passing us upon the Starboard Side; and no other, to my Knowledge, nearer to us than I have before described.

Q. Do you recollect what Number of Ships were near the *Formidable* about the Time of Sunset in the Evening of the 27th?

A. I only remember two Ships, which I took to be the *Egmont* and *America*; but to their being those Ships, I cannot speak positively.

Q. When you bore down, as you say, into your Station, about Half past Two in the Morning of the 28th, did you then see the *Victory's* Lights; and what was the Position of the *Formidable*, with regard to the *Victory*, when you first saw her at Break of Day?

A. I have already answered that Question, in the Course of my Examination on the present Trial; but I will answer it again. When we bore up to take our Station in the Line, I saw distinctly the three Lights in the Stern of the *Victory*, and her Top light; and when we had brought ourselves upon a Wind, and judged ourselves astern of the *Victory* in a Line, as the Ships ahead of us came to and fell off, I could distinctly see her Stern and Top-lights in one. We were, at Break of Day, astern of the *Victory*, as near in a Line as I can carry my Recollection; and the next Ship astern of us, as far as I can charge my Memory, was the *Ocean*, not above two or three Cables Lengths from us; and about a Mile to Leeward of our Quarter, was one of the Enemy's Ships.

Q. Do you recollect the Ship that was ahead of you?

A. I do not.

Q. Do you recollect when you bent a new Forefail?

A. Yes, when the Fleet brought to, in the Morning of the 28th, with their Heads to the N. W.

Q. Was your Foretopgallantmast up, with your Foretopgallantyard across, all the Afternoon; or were they got down?

A. The Foretopgallantyard, to the best of my Recollection, was got down between Sun-set and Dark, and the Topgallantmast struck, and hung in the Top-rope before Dark.

Q. You mentioned the Ships coming to and falling off when you got into your Station, was the Fleet then laying to?

A. No, under Sail; but our Ship would not steer within a Point one Way or other.

Q. Can you assign any Reason why the Foretopgallantyard

topgallantyard was not got down, and Foretopgallantmast struck before?

A. I then judged it too dangerous to attempt to send Men to the Foretopmast-head, till the Foretopmast and Foremast were secured, expecting that, if we had attempted it, the Foremast would have come over the Side, from the rotten State it was proved to be in, and only one Fore-shroud standing to Windward.

Q. You observe you did not bring a new Fore-fail to the Yard till the Morning of the 28th—In the Course of the Afternoon, and the Night of the 27th, had you not repaired the Forefail that was to the Yard, so as to make it useful?

A. No, we had no Opportunity, the Sail being set, till the Fleet brought to in the Morning of the 28th, with their Heads to the Northward.

John Bickerson, Carpenter of the Formidable, sworn.

Q. Give an Account of the Condition of the Foremast after the Action, and if you have some Part of it, which may shew the Condition it was in, produce it.

He delivered a Paper, containing an Account of the particular Damages done to the Formidable, which, he said, was taken the Day of the Action.

N. B. On comparing this Paper with the Account delivered by the last Evidence, they were found to be Copies of each other.

Also produced a Paper with a Quantity of rotten Wood, which he had just now drawn out of the Foremast with his Hand, adding, that he had taken out some from the same Shot-hole at Plymouth, which was worse, but did not think of saving it, not foreseeing he should want it. That the Builder's Assistant and Mastmaker saw that which was taken out at Plymouth, and that it was out of the very Heart of the Mast.

Prisoner had no further Questions to ask.

Court asked,

Q. Did you take notice of the Rottenness of the Mast upon inspecting its Wounds after coming out of Action?

A. I did not take notice of the Rottenness of the Mast till we were in Plymouth Sound.

Q. At what Time was the Foremast fished in the Evening?

A. It was not fished at all till we got in Plymouth Sound.

Q. What Time did you set about securing the Foremast in the Afternoon after the Action?

A. We directly secured the Chain-plate.

Q. Was any Thing done at that Time to any of the Topmasts?

A. We reefed the Maintopmast, and cut the Heel off the next Morning.

Q. Did you discover the Rottenness of the Foremast the Day of the Action?

A. I did not till the Ship was in Plymouth Sound.

Q. Were any other Repairs done to the Masts, Yards, or Bow-sprit, from the Time of the Action till the Ship got into Plymouth?

A. We set about fishing the Mizzenmast with an Anchor-stock the Night of the 27th, and completed it—and no other Repairs but what I mentioned about the Maintopmast.

Q. On what Part of the Ship were you the Evening of the 27th?

A. On the Quarter-deck all the Evening and Night, at Work fishing the Mizzenmast.

Q. Had you been upon the Forecastle any Time after the Action?

A. Yes, to take an Account of the Chain-plates that were shot away, and of the Damages.

Q. Did any one mention to you the Foremast's being found rotten any Time that Evening?

A. I do not remember that any one did at that Time.

Q. How many Chain-plates were shot away forward?

A. Three, I think, on the Starboard Side.

Q. How long was it before they were repaired?

A. We finished them the next Morning.

Withdrew.

Captain James Kinneer, late First Lieutenant of the Formidable, sworn.

Q. How near to the Enemy did the Formidable begin to engage?

A. Within Musquet-shot.

Q. How long do you judge she was engaged?

A. About an Hour and Forty Minutes.

Q. Do you recollect, after coming out of Action, that Orders were given to wear the Ship and stand after the Enemy, in Expectation that the Admiral was coming up to renew the Engagement?

A. Yes; and the Ship was wore in consequence of those Orders.

Q. Did the sternmost Ship of the Enemy fire upon the Formidable while she was wearing?

A. She fired one or two Shot at her, which came under the Counter.

Q. After wearing, were the Officers and Men ordered to their Quarters, in Expectation of going again into Action?

A. Immediately.

Q. Did you observe the French Fleet begin to wear, whilst the Formidable laid with her Head towards them?

A. I think three Ships drew out of the French Fleet, and pointed towards the Formidable.

Q. Did you understand that to be the Reason for Orders being given to wear the Ship a second Time to join the Fleet?

A. I understood so from Captain Bazely.

Q. After we had wore and stood from the French Fleet, did you observe the Motions of those three Ships which had pointed towards us?

A. No, I did not.

Q. Did you observe that the Victory was standing towards the Formidable, while the Formidable was standing towards her?

A. Yes, I did.

Q. Did the Victory and Formidable afterwards meet?

A. The Victory passed the Formidable to Windward, upon different Tacks.

Q. In the Situation you observed the Formidable, when the Victory and Formidable stood towards each other, could a Signal have been seen at the Victory's Mizzen-peak?

A. I think not.

Q. Whilst the Formidable was standing towards the Victory, was any Ship between them in a Line ahead of the Victory?

A. None.

Q. What did the Victory do after she passed the Formidable?

A. She wore under the Formidable's Stern, and stood to the Southward.

Q. Did you observe, after she had wore and stood to the Southward, what Course she steered, whether

whether close to the Wind, or from the Wind, or how?

A. For a short Time, I believe, she kept her Wind, and afterwards she kept about two Points from the Wind.

Q. How did the *Victory's* steering, as you have described, place the *Formidable* with respect to her?

A. Nearly in her Wake.

Q. After the *Victory* passed under the *Formidable's* Stern, at first keeping her Wind a little, and then edging away, what Distance do you think the *Formidable* and *Victory* were asunder within Half an Hour after the *Victory* had wore and passed her?

A. About Half a Mile, or a little more—a long Half Mile.

Q. Was that within the proper Distance for her Station in the Line?

A. Yes.

Q. Did the *Victory* always outfall the *Formidable*, or the *Formidable* the *Victory*, under the same Sail?

A. The *Victory* always wronged the *Formidable*.

Q. Did the *Victory* increase her Distance during the whole Afternoon, or how?

A. I took very little Notice of the *Victory* after she kept away.

Q. When you did take notice of her at any Time, was the Distance increased?

A. She was considerably further from the *Formidable* in the Evening, than when I last before had taken notice of her.

Q. Did you at Times observe how the *Formidable* steered with respect to the *Victory*?

A. Keeping the *Victory* in general about a Point open on the Lee-bow.

Q. Was that, in your Opinion, a proper Course for fetching her Station in the Line, if she could have come up with the Admiral?

A. I think it was.

Q. Did you observe the Red Division form in the Rear of the *Victory*?

A. I do not recollect observing them forming, but I saw them there in the Afternoon.

Q. Do you recollect taking notice where the French Fleet was at that Time?

A. They were forming their Line to Leeward.

Q. Do you remember the *Fox* Frigate coming to the *Formidable* in the Evening?

A. I do.

Q. What Distance do you esteem the *Victory* to have been from the *Formidable* at that Time, and in what Position was she with respect to the *Victory*?

A. About three Miles, and about two or three Points upon the Lee-bow.

Q. Under all the Circumstances you know of the Condition of the Ship, and the Distance we were at, are you of Opinion, whatever Messages might be sent, or whatever Signals might be made, that it was in our Power to fetch up into our Station in the Line, unless the Admiral had waited for us?

A. I do not think it was possible.

Q. Was every Effort used, and every Thing done that was possible, to refit the Ship with the utmost Dispatch?

A. Yes.

Q. Were any of the Lieutenants at that Time sick, and incapable of doing their Duty?

A. The Second Lieutenant was wounded in the Action, the Fifth and Sixth both sick below.

Q. Was the Boatswain killed in the Action?

A. He was.

Q. Was not the Want of those four Officers a

great Distress in the Course of the refitting of the Ship?

A. Most certainly.

Q. Were all the remaining Officers and Men employed in repairing the Damages, till they were completed?

A. They were.

Q. Did the Ship steer kindly, or did she steer wild, on account of having very little Head-sail?

A. She yawed about a good deal.

Q. If the *Formidable* could have got into her Station in the Line, was it possible to have managed her in a close Line?

A. I do not think it was.

Q. Do you recollect the *Fox* Frigate coming to the *Formidable*, and about what Time?

A. She came nearly about Seven o'Clock, to the best of my Recollection.

Q. Was you in a Situation to hear any Part of the Message delivered to the *Formidable*?

A. I was on the Poop, but I did not hear it distinctly.

Q. Do you recollect what you did hear?

A. I understood the Message was for the Vice-Admiral of the Blue and his Division to bear down into the Admiral's Wake.

Q. Did you hear any Part of the Answer?

A. No Part whatever.

Q. Do you remember the Signal for Ships to Windward to bear down into the Admiral's Wake, with several Pendants for Ships of my Division being made on board the *Formidable* in the Evening?

A. I do.

Q. Were those Signals made before, or after the *Fox* came and spoke to her?

A. I think it was before, to the best of my Recollection.

Q. Do you remember at what Time the Foretop-sail was bent, and set in the Evening?

A. About Eight o'Clock the Foretop-sail was set, but I do not recollect when it was brought to the Yard.

Q. Do you remember all Hands being ordered to Quarters, and the Drum beating to Arms, in the Morning of the 28th, and about what Time?

A. About Two o'Clock.

Q. Did the *Formidable* get into the Admiral's Wake, and about what Time?

A. She got into the Admiral's Wake, but I cannot ascertain the Time—it was before Day-light.

Q. Was the *Formidable's* Ship's Company sober, orderly, and well behaved, both in Action and afterwards, in carrying on the Works?

A. They were.

Q. Was any Liquor given them before the Works were over, and at what Time, and how much was there given?

A. Nearly about Ten o'Clock each Man was served with Half a Pint of Wine.

Q. Did you observe any Ships near us in the Afternoon, and towards the Evening of the 27th, and how many, as you recollect?

A. I have no Recollection of more than two, which, I believe, were the *Egmont* and *America*.

Prisoner has done with Captain Kinneer.

Court asked,

Q. Did you see the Signal for the Line of Battle flying on board the *Formidable* in any Time of the Afternoon of the 27th?

A. I do not recollect noticing it. I was on the Poop, but I did not notice the Signal.

Q. Where was you quartered in the Day of Action?

A. On

A. On the Main-deck.

Q. When you were laying with your Head towards the Enemy, after the Action, did you see the *Arctusa*?

A. I do not recollect seeing the *Arctusa* at all.

Q. Did you perceive the *Ocean* near the *Formidable*, at any Time from Three o'Clock till Dark?

A. I do not remember that I saw any Thing of the *Ocean* that Afternoon—I was totally taken up in the Repairs of the Ship, after the Vice-Admiral had made a Disposition of the Officers.

Q. In that Disposition where was you placed?

A. In the after Part of the Ship; the Poop and Quarter-deck.

Q. Did you see the Signal for bearing down (the blue Flag at the Mizzen-peak) made on board the *Formidable* at any Time in the Afternoon?

A. The Vice-Admiral ordered us to repeat the Signal which was made on board the *Victory* for that Purpose.

Q. When you was upon the Starboard Tack in the Afternoon, was the *Formidable* at any Time on the Larboard-quarter or Lee-quarter of the *Victory*, to Leeward of her Wake?

A. Not that I observed; I cannot charge my Recollection at this Distance of Time.

Q. You have said that you heard the Purport of the Message delivered by the *Fox*, did you hear any Orders given in consequence of that Message?

A. No, I do not recollect any particular Orders on that Circumstance; there might have been Orders delivered, but I was busily employed, and did not hear them.

Q. Do you conceive a Practicability of the Vice-Admiral of the Blue's shifting his Flag on board any other Ship of his Division during the Course of the Afternoon, had it been thought expedient so to do?

A. It would have been attended with a great deal of Difficulty, if the Vice-Admiral had thought it necessary.

Q. Did you know that any such Manœuvre was in Agitation at any Time during the Course of the Afternoon?

A. Not that I heard of.

Q. Relate what the Difficulties were, which would have attended the Vice-Admiral's shifting his Flag.

A. The general Destruction of the Rigging, and two of the Boats being wounded; I am not clear as to the third.

The Prisoner admitted it was not his Intention to shift his Flag.

Q. Was you upon Deck in the Morning of the 28th at Day break, and what was the Position of the *Formidable* with respect to the *Victory* at that Time?

A. When I first came on Deck, the *Formidable* was nearly in the *Victory's* Wake; but I cannot ascertain the Distance, nor the Number of Ships between us.

Q. Do you know any of the Ships that were nearest to you, either ahead or astern?

A. I did not take Notice what Ships were near us at that Time.

Q. Was you at any Time on the Forecastle in the Afternoon of the 27th?

A. I believe I went forwards once to speak to Captain Bazely, but I was not long there.

Q. Did you hear any Thing of the *Formidable's* Foremast being rotten?

A. Not at that Time; it was immediately after the Action that I was called, before the slain Men were thrown overboard.

Q. You mentioned that, after wearing, the *Victory* kept her Wind some little Time, and then bore away. At what Time did she come to the Wind again, or did she at all that Evening?

A. Not that I observed.

Q. Was it owing to the *Formidable's* Incapacity of making sail that the *Victory* increased her Distance?

A. It was owing to that, and to the *Victory's* carrying Sail from us.

Q. At what Time of the Day was it you made Observation of the Distance?

A. About Seven o'Clock, or later I believe; at the Time I saw the Signal for Ships to Windward to come into the *Victory's* Wake.

Q. What Time was it you observed the Red Division to have taken Place in the Rear?

A. I did not take any Account of Time; it must have been considerably earlier than the Period I have last fixed about the *Victory*.

Q. Do you understand any Answer was returned to the *Fox* from the *Formidable*?

A. I have understood that an Answer was sent, but I do not know what it was.

Q. What was the Impediment to your hearing of it?

A. I was on the Fore-part of the Poop, and I apprehended the Vice-Admiral answered from the Stern Gallery.

Q. Do you know whether the distinguishing Lights were lighted on board the *Formidable* in the Night of the 27th?

A. I do not know.

Q. Did you observe the Red Division move from the Rear to the Van in the Evening?

A. I recollect their going, but I cannot recollect the Time.

Q. Did you observe the Position of the *Queen* with respect to the *Formidable* just before that Motion took place?

A. I did not observe her Position from the *Formidable* at any Time in the Afternoon.

Q. Had you any Watch upon Deck in the Night of the 27th, and what was it?

A. I was off and on the Deck the whole Night till the Drum beat to Arms—we had no regular Watch till then that Night. I was the Day Officer; but the Second Lieutenant having been wounded, made it necessary for me to be upon Deck.

Q. Did you at no Time inform yourself whether the Lights were lighted or not during that Night?

A. The Top-lantern was wounded, and I ordered a Signal-lantern to be sent up.

Q. Did you never inquire whether the Stern Lights were lighted?

A. I might, but I cannot recollect at this Distance of Time.

Q. Did you receive any Orders for not keeping Lights?

A. No.

Q. How soon after the Action of the 27th did you hear of the Foremast being rotten?

A. I cannot say how soon it was, but I believe it was before we got into Port.

Q. Do you know any Thing of the Foretopgallantyard being down, or the Foretopgallant-mast being struck on that Account?

A. I cannot charge my Memory, I was aft, and do not recollect that Circumstance.

Withdraw.

U

Lieutenant

Lieutenant James Dickinson, of the Formidable, sworn.

Q. Had you the Morning Watch on the 27th of July last?

A. Yes.

Q. Inform the Court of the Situation of the *Formidable* with respect to the *Victory* at that Time, and of what happened from Daylight to the Time of the Signal being made for the Ships of my Division to chase.

A. About a Quarter after Four o'Clock, or nearly Half an Hour after, I relieved the Deck; the *Formidable* was about a Mile upon the Starboard or Lee-bow of the *Victory*, and nearly that Distance ahead. About a Quarter before Five, I think, the *Victory* let the third Reef out of her Topfairs, and the *Formidable* let the third Reef out of her Topfairs at the same Time. About Half after Five the Signals, I believe, were thrown out for Ships of the Blue Division to chase, Six of them, to the best of my Recollection; upon which the second Reef of the Topfairs was let out, and the Mainfairs were set, as was the *Victory's*, and in about a Quarter of an Hour after that the Jib, Middlestayfairs, and Topgallantstayfairs were set on board the *Formidable*.

Q. You say the Mainfairs were set when the *Victory* set her's, by that do you mean that her Mainfairs were up, and that therefore the *Formidable* set her Mainfairs when she set her's?

A. The Mainfairs of the *Victory* were up, and upon her setting her Mainfairs we set ours immediately, as we regulated all our Actions in setting and taking Sails by what we saw in the *Victory*.

Q. Before you began to increase Sail, had you any Stayfairs set, and what?

A. We had the Maintopmast-stayfairs, and Foretopmast-stayfairs, and Mizentstayfairs.

Prisoner had no further Questions to ask.

Court asked,

Q. Did the *Victory* in general outfair the *Formidable* with the same Sail?

A. She always sailed much better; she often spared her Mainfairs, and sometimes a Stayfairs more.

Withdrew.

Captain Bazely called in again.

Prisoner asked,

Q. Did not you report to me in the Afternoon of the 27th of July the Condition of the Foremast, of its being so much wounded, and in so much Danger, that you was afraid of its going over the Side every Minute, and what do you remember of the Report you made to me?

A. I remember reporting to the Vice-Admiral respecting the Wound about Six Feet above the Forecastle-deck, that I found the Mast to be rotten, and it would be dangerous to set any Sail upon it till it should be secured with the Rigging that was shot away; and, if I am not mistaken, the fourth Lieutenant, Mr. Hills, who assisted me on the Forecastle to get the Work done, was present when I ran my Arm in near up to my Elbow.

Q. Did you pull out any rotten Stuff then?

A. I did pull out rotten Stuff; both he and the Master were forward upon the Forecastle when I did it, to the best of my Recollection.

Withdrew.

Lieutenant John Hills, of the Formidable, sworn.

Q. Where was you stationed for the Purpose of refitting the Rigging, in the Afternoon after the Action of the 27th of July?

A. Upon the Forecastle.

Q. Did you at that Time take Notice of the Foremast being wounded, and what Observations did you make relative to it?

A. I saw several of the People looking at the Foremast that was wounded, which led me to examine it myself; I took away several Pieces from the Mast that were rotten, and told Captain Bazely of it.

Q. Do you remember that after the *Formidable* came out of Action, she was wore immediately in the Rear of the Enemy's Line?

A. I do.

Q. Were any Orders given or Disposition made at that Time in Expectation of renewing the Engagement?

A. The Drum beat to Arms, and I was ordered to my Quarters.

Q. Whilst she was lying upon the Larboard Tack, did you observe the *French* Fleet to wear, and any of them to stand towards the *Formidable*?

A. I saw them wear, and I saw several of the Enemy's Ships pointing towards the *Formidable*; they looked up to Windward of her.

Q. Did you understand that to be the Reason the *Formidable* wore again to stand towards the *Victory* and the Fleet?

A. I did.

Q. Did you observe the Motions of those *French* Ships that had been pointing to us after we wore, and stood towards our Fleet, and which Way they afterwards steered?

A. I did not observe them afterwards till they were forming a Line of Battle to Leeward of us.

Q. Did the *Victory* and *Formidable* afterwards meet?

A. They did.

Q. Was any Signal for the Line seen on board the *Victory* from the *Formidable* before they met?

A. I do not believe there was; it was impossible, if there had been any, for we were End-on.

Q. Did you see the *Arctusa* Frigate before we came the Length of the *Victory*?

A. I do not remember to have observed her.

Q. Whilst the *Formidable* was standing towards the *Victory*, were any Ships between them in a Line ahead of the *Victory*?

A. None that I saw.

Q. Did you see the Signal for wearing on board the *Victory*, at the Time of the *Formidable* and *Victory's* passing each other?

A. I am not very clear that I saw the Signal for Ships to wear; but I think, to the best of my Recollection, it was flying, for the *Victory* wore very soon after.

Q. How did the *Victory* steer after she wore, and passed the *Formidable's* Wake?

A. She appeared to me to be going Two or Three Points from the Wind.

Q. Did she appear to you to keep her Wind a little while before she went large in that Way, or how?

A. She was well ranged on the *Formidable's* Lee-bow before she led away so large.

Q. Upon her edging away, as you have described, what was the Situation of the *Formidable* to her in consequence of her so edging away?

A. The *Formidable* was on her Weather-quarter,

ter, about Two or Three Points, I should suppose.

Q. What Distance do you reckon the *Formidable* was from the *Victory* in Half an Hour after she had passed under our Stern?

A. I should imagine from Half a Mile to a Mile.

Q. Was that within the proper Distance of her Station in the Line?

A. Yes.

Q. Do you remember seeing the Signal for the Line flying on board the *Formidable* in the Afternoon, and any particular Circumstance which brings that to your Recollection?

A. I do; I did not observe them till Lieutenant *Winkworth* asked me what those Signals were—I told him, if he would send down for my Signal-book I would inform him—The Signal-book was sent for, and I told him it was the Signal for the Line of Battle ahead.

Q. Did not the *Victory* always outfall the *Formidable* under the same Sail?

A. Very much.

Q. Did you observe what Course the *Formidable* steered during the Afternoon, with respect to the *Victory*?

A. I looked at the *Victory*, and saw her about a Point under our Lee-bow.

Q. Did the *Victory* increase her Distance from the *Formidable* during the Afternoon?

A. Considerably.

Q. What was the Distance increased to; at the Time the *Fox* came to the *Formidable*, to the best of your Judgment?

A. I dare say Three or Four Miles.

Q. What Position do you reckon the *Formidable* was in from the *Victory* at that Time?

A. I should suppose, a Point or Two to Windward of her Quarter.

Q. Was it safe to set more Sail upon the Fore-mast sooner than it was done?

A. No, by no Means.

Q. Was every Effort used, and every Thing done that was possible to refit the Ship with the utmost Dispatch?

A. I do think it was; it was the Vice-Admiral's Order, and every Body was ready and expert in obeying him.

Q. Do you remember the *Fox* Frigate coming to the *Formidable*, and about what Time?

A. Perfectly well; I should imagine it was about Sun-set, or near it.

Q. Do you remember the Signal for several Ships of the Blue Division to bear down into the Admiral's Wake, and its being repeated on board the *Formidable*?

A. I remember that Signal being flying on board the *Formidable*.

Q. Was that before or after the *Fox* spoke to the *Formidable*?

A. Before.

Q. At what Time was the Foretop-sail bent and set?

A. At Eight o'Clock.

Q. Were all Hands called to Quarters, and did the Drum beat to Arms before Day-light on the 28th, and about what Time?

A. The Drum beat to Arms before Day-light.

Q. Did the *Formidable* get into the Admiral's Wake before Day-light, and about what Time?

A. She was in the *Victory*'s Wake at Day-light, but I do not know the Time she got there.

Q. Did you observe any Ships near the *Formidable* in the Course of the Afternoon of the 27th, and how many?

A. I did not observe any being particularly near her.

The Prisoner has done with the Witness.

Adjourned, being near Four o'Clock, till Tomorrow Morning at Nine o'Clock.

SEVENTEENTH DAY.

FRIDAY, the 30th of APRIL, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

Lieutenant Hills called in again.

Court asked,

Q. Where were you quartered in the Morning of the 27th of July?

A. Upon the Lower-deck.

Q. Where were you stationed to see the Rigging refitted after the Action?

A. Upon the Forecastle.

Q. Were you there the most of the Afternoon?

A. The greatest Part of the Afternoon, except the Interval when I was ordered to my Quarters, expecting to engage, the Ship being then on the Larboard Tack.

Q. Were you ordered again upon the Forecastle, after the Ship got upon the Starboard Tack?

A. Yes, I was.

Q. What Sail had the *Formidable* set most of the Afternoon?

A. The Fore-sail very much torn; the Main-

sail, Maintop-sail, Mizentop-sail; the Foretop-sail was shot away almost entirely.

Q. Was it from the Forecastle that you saw the Signal for the Line flying at the Mizentop-sail?

A. Yes, this was before the Main-sail was set.

Q. How long was the *Formidable* on the Starboard Tack, before the Main-sail was set?

A. I should suppose upwards of a Quarter of an Hour, or near Half an Hour; we gave Opportunity for the *Victory* to pass us before we set it.

Q. Do you recollect when the Signal for the Line was made, whether it was with or without a Gun?

A. I do not recollect that Circumstance; I said Yesterday, I did not see it till it was pointed out to me by Lieutenant *Winkworth*.

Q. Did you observe the *Ocean*, or any other Ships being near you that Afternoon?

A. I did not observe the *Ocean*, nor particularise any other Ships being near us.

Q. When the Signals were made for particular Ships to bear down into the Admiral's Wake, did you observe any Ships near you bear down in Obedience to that Signal?

A. I did not.

Q. Did

Q. Did you see the Signal to bear down into the Admiral's Wake repeated on board the *Formidable*?

A. I did.

Q. Was the Signal for the Line hauled down in order to make that Signal appear plainer?

A. I believe it was not.

Q. When was the Signal for the Line hauled down on board the *Formidable*?

A. I cannot tell.

Q. Did you see it flying at the Close of the Evening?

A. I was not then on Deck; I was ordered down upon the Lower-deck to complete the Quarters in Lieu of the Men who had been killed and wounded.

Q. Do you know whether there were or not Orders from Sir Hugh Palliser for the Signal for the Line to be hauled down?

A. I do not know.

Q. Do you know whether the *Formidable* carried distinguishing Lights that Night?

A. I was otherwise employed that Night upon the different Decks, and therefore cannot say.

Q. Had you no Watch that Night?

A. All Hands were up all Night.

Q. Did you take Notice of the *Queen* that Evening at Five or Six o'Clock?

A. I saw the *Queen* form in the *Victory's* Wake in the Afternoon; I do not know the Hour.

Q. Do you recollect her Situation from the *Formidable* at the Time you saw her in the Rear?

A. Rather before our Beam, I should suppose about a Mile.

Q. About what Time was it?

A. I should suppose by the Sun it might be about Four or Five o'Clock.

Q. Do you recollect about Five, or between Five and Six, what Progress you had made in repairing your Rigging?

A. I do not; but I am very sure no Time was lost.

Q. At the Time you mention the Bearings of the *Queen*, did you take Notice how the *Victory* bore?

A. No, I did not attend to that.

Q. At the Time you mention seeing the Signal for bearing down, was it at the Time the Pendants were flying?

A. I mentioned that I saw it in the Evening when the Pendants were up.

Q. Did you see it at any other Time?

A. No, I did not; I saw the Signal for the Line in the Afternoon.

Q. Did you consider the *Formidable* as a well-manned Ship?

A. No, not particularly; she was manned as other Ships in general are.

Q. At what Time in the Evening was it that you quitted the Forecastle, and went down below?

A. Soon after the *Fox* came to the *Formidable*.

Q. Give an Account of what you heard pass between the *Fox* and *Formidable* upon the *Fox* joining her.

A. I was not in a Situation to hear the Message, I was stationed on the Forecastle.

Q. During the Time you were on the Forecastle, were your Men alert and obedient, and was every Endeavour made use of to get your Rigging repaired?

A. They were very much so; and I think every Endeavour was used, and with great Expedition.

Q. Just before you left the Forecastle, did you

observe the Positions of the other Two Divisions with respect to the *Formidable*?

A. We were about Three Points on the *Victory's* Weather-quarter; I did not observe the Position of Sir Robert Harland's Division, but I believe they were ahead of the *Victory*.

Q. Was the Foretopfail set at the Time you made your Observation of the *Victory* and *Queen*?

A. I left them in the Operation of setting it, and when I came upon Deck in about Half an Hour after, I found it set.

Q. What Hour was that?

A. About Eight o'Clock.

Withdraw.

Lieutenant Jacob Waller, of the Formidable, sworn.

Q. Do you remember the *Fox* coming to the *Formidable* in the Evening of the 27th?

A. Yes.

Q. Do you remember a Number of Ships Pendants being let fly on board the *Formidable* in the Evening of that Day?

A. Yes; I perfectly remember several Ships Pendants flying; but what Ships they were for, I cannot pretend to say.

Q. Were those Pendants flying before the *Fox* came to us?

A. Yes, they were.

Q. Do you remember any Circumstance relating to the distinguishing Lights on board the *Formidable* that Night? If you do, relate what you recollect.

A. I remember they were lighted as usual, and that the Man in the Top complained that he could not keep the Light in, because the Lanthorn was shot. He was desired to remedy that as well as he could; a Lanthorn was sent up with a Light, and the Candles were again lighted, and continued so, to the best of my Remembrance.

Q. Do you remember the *Formidable's* going before Day-light into the *Victory's* Wake, and any particular Circumstance which then occurred? and if so, relate it to the Court.

A. I remember the Vice-Admiral ordered the Mainfail to be hauled up, that we might go down and take our Station. I think this was about Two o'Clock. The Mainfail was hauled up, and we put our Helm up, in order to take our Station. The Master was then upon Deck, and was under some Apprehension of the *Victory's* Lights being the French Admiral's Lights; which Opinion I mentioned to the Vice-Admiral, who desired the Ship to be brought to the Wind again. At the same time, the Vice-Admiral took his Glass, went over to Leeward, and was satisfied they were the *Victory's* Lights. Accordingly the Helm was again put up, and we took our Station as near as we could judge—I beg Leave to observe the Reason why those Lights were supposed to be the French Admiral's Lights, which was—before we bore up, we saw distinguishing Lights just open with our Starboard-bow. These Lights proved to be the Vice-Admiral of the Red. As near as I could judge of the Distance, it was at about Five or Six Miles.

Q. Did the *Formidable* at any Time shoot ahead of the *Victory* before she got into her Wake?

A. I went off the Deck soon after Eleven o'Clock;—left the *Victory* under our Lee-bow;—came up soon after One, and found her much in the same Situation with respect to the *Formidable*.

Court's Questions :

Q. Do you recollect the Time when the *Fox* joined the *Formidable* in the Afternoon of the 27th of July?

A. I remember it was near Sun-set.

Q. Do you remember what passed between the *Fox* and *Formidable*?

A. I remember there was a Message, and an Answer given; but, from my Situation upon the Larboard Gangway, I could not hear distinctly either the one or the other.

Q. Do you recollect seeing the Signal for the Line of Battle flying on board the *Formidable* at any Time in the Afternoon of the 27th of July?

A. I remember, at the Time I saw the Pennants flying, I saw a Signal or Signals flying at the Mizzen-peak; but what they were, I did not inquire.

Q. Where was you stationed in the Service of refitting the Ship in the Afternoon?

A. At the Main Rigging.

Q. At what Time was the Mainfall set when you was on the Starboard Tack, and what Situation was the *Victory* in at that Time, and how long had she passed you?

A. I cannot ascertain the Time the Mainfall was set; but as soon as the Tacks and Sheets which had been shot away were spliced, and every Thing else ready, it was set.—To the best of my Recollection, we were then nearly in the *Victory's* Wake, and not much more than Half a Mile astern of her.—I cannot recollect how long she had passed us, but I suppose about Half an Hour.

Q. Do you recollect any particular Reason assigned why the Foretopfall was not sooner set in the Evening?

A. I must beg Leave to observe, that I was stationed at the Main Rigging; but I could plainly see the Rigging forward was in general shot away. I understood that the Foremast was much wounded, and it was necessary to secure it before any Sail could be set.

Q. Were you upon Deck in the Morning of the 28th at Day-break?

A. Yes, I was.

Q. What Ships were near you at that Time?

A. I cannot charge my Memory.

Q. Did you plainly see the *Victory*?

A. Yes; I remember very well seeing the *Victory*.

Q. What Situation was she in with regard to the *Formidable*?

A. We were in our Station. The *Victory* was, of course, nearly ahead of us.

Q. Did you set the Mainfall again, after hauling it up in the Morning?

A. I do not recollect that we did. As we were in our Station, it was not necessary.

Q. Do you recollect if Captain Buxton was upon the Quarter-deck at the Time there was a Doubt about the *Victory's* Lights?

A. I do not recollect that he was upon Deck just at that Time; but he was in general upon Deck while I was there.

Q. Did you at that Time see the distinguishing Light burning in the *Formidable's* Top?

A. I do not recollect that I did. Our Lights in general were so well attended to, that I did not think it necessary, as we were going down into the Line; and that, of course, engrossed my Attention.

Q. Where was you quartered in Time of Action?

A. On the Lower-gun Deck.

Q. When you were upon Deck, did you ever inquire about the Stern-lights?

A. I do not remember that I did: I supposed that they were burning as usual.

Q. Do you recollect about a Gun being fired as a Signal at any Time in the Afternoon, after coming out of Action?

A. I do not recollect it.

Q. After the *Formidable* got into her Station in the Line in the Morning of the 28th, what Sail did she keep abroad?

A. I do not recollect any Alteration being made.

Q. What Sail had she set?

A. To the best of my Recollection, her Top-sails and Forefall. I do not recollect any thing about their being reefed.

Q. Do you remember if the Mizentop-sail was handed in the Evening, as is customary in Flag Ships?

A. I remember we generally used to hand it; but I cannot remember if it was on that particular Night.

Q. You have said you saw a Signal or Signals flying at the Mizzen-peak; do you recollect if the Mizzen was set at that Time?

A. I cannot charge my Memory.

Q. Did you see, at any Time that Afternoon, any general Signals flying on board the *Victory*?

A. I did not attend to the Signals on board the *Victory*; I do not remember that I did.

Q. Do you remember, after the *Victory* passed you on the Starboard Tack, that you said you was near the *Victory's* Wake, in what Manner the *Formidable* was cunnet that Afternoon?

A. We kept the *Victory* about a Point or a Point and a Half under the Lee-bow.

Q. Did you go from the Wind at that Time?

A. Yes; about a Point or a Point and an Half from the Wind.

Q. Did you observe the Vice-Admiral of the Red when he was in the Rear of the Fleet at any Time in the Afternoon of the 27th?

A. I remember the Vice-Admiral of the Red forming to Leeward of us, in the Rear of the Admiral; but I cannot speak to the Time.

Q. How was the *Queen* situated then with respect to the *Formidable*?

A. To the best of my Recollection, rather before the *Formidable's* Beam, about a Mile, as near as I can speak.

Q. Did you consider the *Formidable* as well manned?

A. We were tolerably well manned;—nothing remarkable.

Withdraw.

Robert Haven, Gunner of the *Formidable*, sworn.

Q. Have you got your Expence-book for the Month of July last?

A. I have.

He produced it.

Q. Does it appear that a Signal-gun was fired on board the *Formidable* in the Afternoon after the Engagement of the 27th? If so, read the Article, to shew the Expenditure.

The Article was read, as follows:

1778, 27th July. To fired per Signal, Line of Battle ahead,

Twelve-pounders,	1
Powder,	6 lb.
Cartridge,	1

Q. Is that Book of your own Hand-writing?

A. Yes.

Q. When was Inquiry first made of you, to know

know whether there was an Entry in your Expence-book of such Gun being fired?

A. Last Saturday Morning.

Q. Does it appear by your Book if that Gun was the last fired that Day?

A. Yes.

Court's Questions:

Q. Do you recollect that Gun being fired?

A. My Mate is here, who fired the Gun, and can speak to that.

Q. Do you, of your own Knowledge, remember to have seen the Signal for the Line of Battle flying on board the *Formidable* that Afternoon?

A. To the best of my Knowledge, I do think I did.

Q. What were the Flags you saw?

A. I asked a Signal Midshipman, who told me it was the Signal for the Line of Battle; but I do not recollect what the Flags were.

Q. Were more Flags than one flying at the Mizzen-peak at the Time you speak of, and what Time was that?

A. It was between Two and Three in the Afternoon. I cannot charge my Memory whether there were more than one, as it was not a Duty of mine.

Q. Is all this Book of your own Hand-writing?

A. Yes, except Captain *Bazely's* Signature to it.

Q. How long is it since this Book was copied from your rough Scroll?

A. In August last.

Q. Has it been constantly in your Possession ever since?

A. Constantly; except when the Captain's Clerk copied it for the Captain's Use.

Withdrew.

William Adams, Gunner's Mate of the *Formidable*, sworn.

Q. Do you remember a Signal-gun being fired in the Afternoon after the Engagement of the 27th of July? and if you remember any thing particular relative to the firing of that Gun, give an Account of it.

A. It was fired in the Afternoon, presently after the Engagement; I fired it myself.

Q. Do you remember whether the Shot was drawn?

A. The Shot was in it; round and double-headed, and pointed in the Water.

Q. Was there any other Signal-gun that Afternoon?

A. No.

Q. What Gun was it that you fired?

A. The Sixth Gun on the Larboard Side.

Q. On what Occasion was that Gun fired?

A. I do not know; only that it was a Signal-gun.

Q. How came you to know that the round and double-headed Shot was in the Gun?

A. They were all shotted on that Side before we came to Action, and the Gun was never used. I saw them all shotted myself.

Q. Was the Larboard Side the Weather or the Lee Side at that Time?

A. The Weather-side, to the best of my Knowledge; but a working Man cannot notice all those Things.

Withdrew.

Sir William Burnaby, Bart. called in again.

Q. After you had delivered the Message with which you was sent to the *Queen*, did you take notice of the *Vengeance*?

A. I did.

Q. Was she left at a Distance astern, and did she appear to you to be in a disabled State?

A. Yes; she was at least Two or Three Miles astern of the Admiral, and nearly in his Wake; and then seemed to me to lie in a very disabled State.

Q. Do you remember coming on board to me, the Day after the Action, with a Message from Admiral *Keppel*, and what it was?

A. I remember my Signal was made to come on board the *Victory* soon after Day-light; it might be about Six o'Clock; I cannot be very exact as to Time. I went on board, and was directed by Admiral *Keppel* to present his Compliments to Sir *Hugh Palliser*, and desire to know how he was, and to have the State and Condition of his Ship.

Q. Do you remember returning to Admiral *Keppel* with a Letter from me, and whether you delivered it yourself, and if any thing occurred between Admiral *Keppel* and yourself at the Time of delivering the Letter?

A. I remember to have returned from the *Formidable*, I think, in about a Quarter of an Hour from the Time I left her, with a Letter from Sir *Hugh Palliser* to Admiral *Keppel*, which I presented myself to the Admiral, then, I think, in his Cot. After the Admiral had read the Letter, he delivered it to Admiral *Campbell*, who was in the Cabbin at the Time, saying, as near as I can recollect, "Here, *Campbell*, look at that Letter; Sir *Hugh* seems to have suffered more than any of us in the Action." I continued a few Minutes after in the Cabbin. Admiral *Keppel* having no further Commands for me, I withdrew, and went on board the *Milford*.

Court's Questions:

Q. Upon what Tack was the Fleet at the Time you carried that Message, and was it under Sail, or laying-to?

A. As well as I now recollect, it was laying-to on the Larboard Tack, the Ships being with their Heads to the Northward.

Q. Where was the *Formidable* situated with regard to the *Victory* at the Time you carried that Message?

A. I do not at this Moment recollect her Position.

Q. What Hour was it the *Vengeance* lay in the disabled State you have described?

A. Between Five and Six o'Clock.

Q. Do you recollect seeing any Three-decked Ships astern of the *Victory* at this Time, and how many, and their Names?

A. When I delivered the Message to Sir *Robert Harland*, the *Queen* was astern of the *Victory*, and nearly in her Wake, with some others of his Division; but I was led astern of them all, except the *Vengeance*; and I was tolerably near to her before I put about, in order to work to Windward to get into my Station.

Q. Did you take notice of the Vice-Admiral of the Blue at the Time you were going astern, and what Ships he had with him, and how far distant to Windward?

A. Soon after I passed Sir *Robert Harland's* Ship, and the others that were astern, I think I saw

saw the *Formidable* a good way astern, and pretty well to Windward.

Q. What Distance might the *Queen* be astern of the *Victory* when you delivered the Message?

A. I do not recollect.

Withdrew.

Lieutenant John Baird, of the America, sworn.

Q. Do you remember taking notice of a Frigate coming to the *Formidable* in the Evening of the 27th of July, and about what Time?

A. I perfectly recollect a Frigate's coming under the *Formidable's* Stern in the Close of the Evening; I cannot recollect the exact Time.

Q. Do you recollect noticing the Signal for the Line flying on board the *Formidable* at any Time that Afternoon?

A. I cannot speak with any Certainty to the Signals; I saw many Signals flying on board the *Formidable* in the Evening; I am certain to many Pendants for particular Ships to bear down into the *Victory's* Wake.

Court's Questions.

Q. Do you know that the Frigate which you saw come under the *Formidable's* Stern was the *Fox*?

A. I was told at that Time it was the *Fox*; and, from Circumstances afterwards, it could be no other.

Q. What Time was it?

A. It was towards the Close of the Evening.

Q. Was it before or after Sun-set?

A. Before Sun-set.

Q. What Distance might you be from the *Formidable* at that Time?

A. About Half a Mile astern, almost in her Wake.

Q. How did the *Victory* bear at that Time?

A. I believe about Three Miles under our Bow, to the best of my Recollection.

Q. Did you see the Pendants flying on board the *Formidable* before or after the *Fox* came under her Stern?

A. Much about the same Time; I cannot particularly recollect.

Q. Was the Signal for the Line on board the *Formidable* taken notice of on board the *America*?

A. Yes; I have heard several say they saw it flying on board the *Formidable*, particularly the Master.

Q. Did you observe the *Ocean* that Evening?

A. Yes; she was upon the *Formidable's* Lee-quarter, between us and the *Formidable*, and upon our Lee-bow.

Q. Did you observe when the *Ocean* bore away to form in her Station in the Line?

A. I saw the *Ocean* bear down, in Obedience to a particular Pendant, directly before the *America*. She was to Leeward of us. We bore away directly after her.

Q. How large did she go?

A. Almost before the Wind; I think it was thereabouts.

Q. How far did she run down before she got into her Station?

A. I do not think it could exceed a Mile, or a little more.

Q. Was you in your Station in the Line before Dark?

A. Just as we got into our Station, it was then dark.

Q. Was the *Ocean* then in her Station?

A. She had got into her Station before us.

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Q. When you got into your Station, was you further astern than you should have been in the Line of Battle?

A. I think not; we were nearly in our Station.

Q. Where was the *America's* Station in the Line of Battle?

A. Astern of the *Ocean*.

Q. Did you esteem yourself further from the *Victory* when you got into your Station, than you should have been respecting the other Ships between the *America* and *Victory*?

A. I can only speak with respect to the *Ocean*; it was then near Dark.

Q. Can you speak with regard to the Distance of the *Victory*?

A. I cannot; it was near Dark; I saw the *Victory's* Lights.

Q. When you bore away to your Station in the Line, did you leave any Ships with the *Formidable*?

A. I do not recollect there were any Ships left with the *Formidable*. There were two or three Ships left to Windward much disabled; I believe the *Ramillies* was one that was most disabled.

Q. Did you see the *Victory's* Lights all Night?

A. I saw them at Eight o'Clock; but I was not upon Deck in the Night myself.

Q. Did you see the *Formidable* in the Morning at Day-light?

A. Yes; we saw the three Flags; they appeared to be in a Line.

Q. Do you recollect seeing the *Vengeance* in the Afternoon?

A. Whilst we were standing on the Starboard Tack in the Afternoon, there was a Ship a great way astern of us, which, I was told, was the *Vengeance*.

Q. How far do you think she might be astern about Six o'Clock, or a little before, from the sternmost Ship in the *Victory's* Wake?

A. I cannot say; we were in Pain for her, as she appeared to be nearer the *French* Fleet than any of our Ships.

Withdrew.

Richard Searle, Master of the America, sworn.

Q. Do you remember seeing a Frigate come under the *Formidable's* Stern in the Evening of the 27th July, and about what Time?

A. I remember seeing a Frigate come under the *Formidable's* Stern towards the Close of the Evening, a little before Sun-set, as near as I recollect.

Q. Do you remember seeing the Signal for the Line of Battle flying on board the *Victory* and *Formidable* that Afternoon?

A. I remember seeing a Flag at the Mizzen-peak on board the *Victory* and *Formidable* before the Blue Flag was hoisted, but what Signal it was I cannot say.

Q. Do you remember seeing the *Formidable's* Lights that Night?

A. Frequently I saw the *Formidable's* Lights.

Prisoner has no further Questions to ask.

Court's Questions.

Q. Describe the Lights you saw.

A. I saw the Stern-lights frequently; I cannot be positive as to seeing the Top-lights.

Q. At what Time in the Evening did you first see them?

A. Just at Dark, and from that Time till Eleven o'Clock.

Q. Was you in the Line at that Time?

A. Yes,

A. Yes, when we saw the Lights.
Q. Did the *Formidable* appear to be in the Line at that Time?

A. No, upon the Weather-bow.

Q. You say you observed a Flag at the Mizzen-peak, before the Blue Flag was hoisted, was that Flag hauled down or continued, after the Flag was hoisted?

A. I cannot say whether it was continued flying after the Blue Flag was hoisted; I believe it was hauled down after the Blue Flag was hoisted, but at this Distance of Time I cannot recollect.

Q. Was the Signal which you saw considered as the Signal for the Line on board the *America*?
A. I believe it was, by every Body.

Q. Do you remember the Time in the Evening you bore down into the *Victory's* Wake, and what Hour was it, as near as you can recollect?

A. It was a little before Sun-set: We attempted to bear down twice, but the Ships were so thick to Leeward, that we were obliged to bring to: We got into our Station a little before Sun-set.

Q. Were the Ships so thick to Leeward that you could not get into your Station?

A. We could not, without waiting to give them Opportunity to shoot on.

Q. Are we to understand by that, that you must have brought the Wind upon the Larboard-quarter to get into your Station?

A. No, our Station in the Line was astern of the *Ocean*, and there was some Ships in the Way that prevented our getting into our proper Station; but we did not bring the Wind upon our Larboard-quarter, it was always upon the Starboard-quarter.

Q. How large did you steer, when you bore away to get into your Station, and what Distance do you think you ran?

A. I believe we brought the Wind about Four Points upon the Quarter, and I believe we ran down, at different Times, about a Mile.

Q. Do you recollect of what Division those Ships were, which caused the Impediment?

A. I do not recollect what Division they were of; I only took Notice of the *Ocean*, which was the Ship we were to follow.

Q. When you first made the Attempt to bear down, where was the Vice-Admiral of the Red's Division?

A. I believe they were ahead of the Admiral.

Q. How far astern of the *Formidable* were you, when you bore away to get into your Station?

A. We were not far; I believe it might be about One-half, or Three-fourths of a Mile.

Q. Did you see the Signal for the Line flying on board the *Victory* in the Evening?

A. I saw a Flag flying at the Mizzen-peak, but I cannot charge my Memory with what it was.

Q. How early was it in the Evening that you understood the Signal for the Line was flying on board the *Formidable*?

A. I believe it was about Six o'Clock in the Evening.

Q. Did you take notice of the *Formidable* just before Dark?

A. Yes.

Q. What was the Situation of the *America* with regard to the *Formidable*?

A. We were upon the *Formidable's* Lee quarter.

Q. Was you upon Deck at Day-light on the 28th?

A. Yes, I was upon Deck an Hour before Day light, and continued there all the Morning.

Q. Do you recollect seeing the *Formidable* at any Time after you came upon Deck in the Morning?

A. Early in the Morning, I do not recollect that I took any notice of the *Formidable*.

Q. How soon do you recollect taking notice of her?

A. I cannot say, it is so long since, it might be Seven or Eight o'Clock.

Q. When you got into your Station in the Line, were you the Sternmost Ship?

A. I believe there were Two or Three Ships astern of us, I cannot say positively.

Q. Were they at any great Distance from you?

A. No, I believe they were at no great Distance.

Q. What Ship, reckoning from the Van Ship of the French Fleet, was the *America* opposed to in the Line, when she first got into her Station?

A. I believe the Fourth or Fifth Ship was upon our Beam, or thereabouts, about a Mile or a Mile and a Quarter to Leeward.

*Discharged from further Attendance.
Withdrew.*

Lieutenant John Inglefield, late of the Robust, sworn.

Prisoner's Questions.

Q. In what Situation was the *Robust* with respect to the Vice-Admiral of the Red's Division at Day-break in the Morning of the 28th July?

A. The *Robust* was, at that Time, about Two or Three Cables Lengths upon the Vice-Admiral of the Red's Weather-quarter.

Q. As the Day came on, describe what Ships you saw near to you, and their Situations from you.

A. I saw most of the Ships of the Vice-Admiral of the Red's Division near the *Robust*; the *Berwick* I thought very near on our Lee-quarter.

Q. When you first saw the *Formidable* after that Time, in what Situation was she?

A. When I first saw the *Formidable* she was Three or Four Miles distant from the *Robust*, at the Time I first mentioned, it was just then Dawn of Day; I went then upon the *Robust's* Poop to look for the *Formidable*, but did not see her.

Court asked,

Q. How long after that did you see her?
A. As soon as there was Day-light to see the Distance of Three or Four Miles.

Prisoner asked,

Q. What Situation was the *Formidable* in at the Time you did first see her?

A. The *Formidable* was in the Rear of the Fleet; I only saw her Flag; there were many Ships between the *Robust* and the *Formidable*.

Q. Did she appear to be astern of the Admiral at that Time?

A. She did.

Q. Did the *Robust* tack or wear, in order to join the *Formidable*?

A. When it was perceived that the *Robust* was at such a Distance from the *Formidable*, the Mainfall was hauled up, the Mizentop-sail was laid aback, to give Room for the *Robust* to be wore, the Ship upon her Lee-quarter being in her Way; as soon as she was astern of that Ship, the *Robust* was wore.

Prisoner has no further Questions to ask.

Court's Questions:

Q. Do you know what Ship that was?

A. I have said before, I believed it was the *Berwick*.

Q. Did

Q. Did you take notice of the *Stirling Castle* at that Time?

A. I did not; there were other Ships about the *Berwick*, of the Red Division, so that I did not take particular Notice of her.

Q. After you had wore, did you run to join the *Formidable* immediately?

A. We did.

Q. What Distance do you suppose you ran to join the *Formidable*?

A. I should suppose Three or Four Miles, the Distance I mentioned the *Formidable* was at.

Q. Were your Colours flying at Day-light?

A. The *Rebuff* had both Ensign and Jack flying at Day-light.

Q. Had you any Thing at your Foretopgallantmast-head, that Night, which appeared like a Flag?

A. The Foretopgallantmast had been shot away in the Action.

Withdrew.

John Brand, *Seaman of the Formidable*, sworn.

Prisoner's Questions:

Q. Do you remember being employed to light the Top-lantern the Night after the Action?

A. I do.

Q. Relate what you remember about lighting, and what you then did.

A. The Top-light was sent up as usual, in a Lantern, a Signal Lantern, because the other Lantern was wounded.—After the Light was sent up, we found Means, by tying a Piece of Canvas over the Holes, to make the Light burn in the Top-lantern.—I was the first two Hours of the Night looking out, till Ten o'Clock, then I went to sleep for about an Hour and an Half, as near as I can recollect; when I waked, the Light was burning; I layed down again, being fatigued with my Day's Work in the Top.—I awaked at Dawn of Day, then the Light was out; whether it was ordered out or burnt out, I cannot say.

Prisoner has no further Questions to ask.

Court have none.

Withdrew.

Thomas Constable, *Seaman of the Formidable*, sworn.

Prisoner's Questions:

Q. Do you remember whether there was a Light in the Poop-lantern the Night after the Engagement?

A. Yes.

Q. How do you know there was a Light there?

A. I had the Charge of it.

Q. What did you do?

A. I took care to snuff it.

Q. How long had you the Care of it?

A. Two Hours.

Q. Did you leave it burning?

A. Yes.

Prisoner has no further Questions to ask.

Court's Questions:

Q. What were the Hours you had Charge of it?

A. Between Twelve and Two.

Q. Was it burning at the Time you took Charge of it?

A. Yes.

Q. Did it ever go out while you had the Charge of it?

A. No.

Court has no further Questions to ask.

Withdrew.

Thomas Read, *late Master of the Queen*, sworn.

Prisoner's Questions:

Q. Is this Log-book, which you have delivered into Court, the identical Log-book which you delivered in to the Court Martial on Admiral Keppel?

A. It is not.

Q. Where is the one then delivered?

A. It was delivered to my Agent to pass my Accounts when I was removed from the *Queen*, and here is a Letter from him acknowledging the Receipt of it.

A Letter, dated the Sixteenth April, and signed

H. Creed, was read.

Q. Whose Log is this?

A. That is the Log-book I found in the Ship when I was appointed to the *Queen*: The Remarks for the 27th and 28th July are my own.

Q. Is this the proper Ship's Log-book, or was that you produced before the proper Ship's Log-book?

A. This is the public Log-book; the other was my own, I kept for my private Use.

Q. Is this an exact Copy of what you produced before?

A. There is some Difference in marking the Afternoon of the 27th July in this Book, that was not in the former.

Q. What were those Differences?

A. The Differences are, that in my own private Book, there were no Knots marked from Twelve to Four, nor the different Courses we steered; and the hauling down the Signal for engaging was mentioned in my own private Book, but is not in this;—these are all the Differences I recollect between the Two Books.

Q. Was that Omission of marking the Book as far as from Half an Hour after One to Half an Hour after Four?

A. I cannot now exactly recollect.

Q. When were the Rates of going, that appear now to be marked in this Book, entered in it?

A. On the 28th in the Afternoon, the Day after the Action.

Q. How came they to be omitted in the Log-book you produced at the former Court?

A. Because I did not think it of any Consequence that Afternoon; I did not think I could trust to the Run, it was so various.

Q. Was you not asked at the other Court, whether you were sure that there was nothing marked for those Hours in the original Ship's Log-book; and what was your Answer at that Time, when you was under Examination upon Oath?

A. At that Time, I recollect the Question was asked me, and, to the best of my Knowledge, I thought the original Log-book had not the Knots to it at that Time, and I answered that there were none.

The Minutes on Admiral Keppel's Trial were referred to.

Q. I observe, that during the Time that was vacant in the former Log-book, the Entry in this Log-book is uniformly Two Knots, when you was upon the Larboard Tack, which was within the Time we are now speaking of, standing towards the Enemy, had not your Ship all her Sails set, Courses, and Topgallantails?

A. As soon as we had tacked to double upon the Enemy, we did set Topgallantails and every Thing.

Y

Q. Here

Q. Here is an Observation in the Log-book which I will read, and then ask you a Question upon it: "Tacked about Half past Noon, being about a Mile past the Enemy's Rear, with Intention of gaining the Wind of them; carried a pressing Sail to double upon the Rear, as they were then close attacked by Vice-Admiral Palliser's Division, several of which were disabled."

Was that Remark of your own Entry, and of your own making?

A. It is entirely my own.

Q. In consequence of that Observation, did you take particular Notice of the *Formidable's* being so engaged?

A. I did observe, particularly, when she came out of the Smoke, that she was one of the Ships which was much tattered.

Q. Was the Condition of the *Formidable*, and the other Ships you have spoke of in your Log-book, very apparent?

A. I think it was, from the Appearance of their Sails, and some of their Yards being down.

Q. Did you take notice that the *Formidable*, after she got clear of the Enemy, immediately wore, and laid her Head towards them again?

A. My Attention was so particularly given to our Ship, that I did not see her till we were afterwards upon the Starboard Tack.

Q. Was the Log-book usually communicated to Sir Robert Harland?

A. My own private Log-book was always communicated to him, whenever he chose to see it.

Q. Was the same Remark in your private Log-book as the one just now read out of this?

A. Exactly, as near as I can recollect, the same.

Q. Did Sir Robert Harland approve of your Log-book, when shewn to him?

A. He never signified any Disapprobation of any Part of the Log-book to me.

Q. Do you remember having any Conversation with him about this particular Part of the Book on that Day's Work, or any Part of it?

A. On the 28th, between Nine and Ten o'Clock, after the Action, I shewed on a rough Piece of Paper the Remarks of that Day's Transactions, which the Vice-Admiral approved of, all but to Time; in which, he believed, I had not been very correct.

Q. Do you remember the Admiral, or the Captain, with yourself, making these Observations respecting me, and the Ships of my Division?

A. Neither Admiral or Captain desired me to make any particular Remarks about it; they are all my own.

Q. In the Afternoon, when you bore down to form in the Rear of the *Victory*, did not you fall large, and what Sail were you under?

A. We bore down as soon as the Signal was made, and wore under our Fore-sail and Top-sails; as soon as the Ship was wore, we were in our Station.

Q. When the *Formidable* came out of Action, how was she situated with respect to the *Queen*?

A. The *Queen* passed her very soon after she came out of Action, on the opposite Tack, to Windward of her.

Q. At what Distance?

A. I cannot now exactly recollect—something about a Mile, I believe.

Q. How was the *Victory* at that Time situated with regard to the *Queen*?

A. She appeared almost astern of us—I cannot now recollect her Distance.

Q. Do you recollect, in passing from the Rear to the Van in the Afternoon, what Distance you were from the *Victory* and *Formidable* when you passed between them?

A. In passing the *Victory* we were about Half a Mile to Windward of her—the *Formidable* was then to Windward of us; the Distance I cannot recollect.

Q. Was you upon Deck at Day-break in the Morning of the 28th?

A. Not till the Signal was made to form the Line—very soon after Day-light—I was then sent for to wear Ship.

Q. What was the Situation of the *Queen* at that Time with respect to the *Victory* and *Formidable*?

A. I cannot recollect the Distance and Situation of the *Formidable*, for I did not see her—we were about a Mile and an Half ahead of the *Victory*.

Q. Did you take notice of the *Stirling Castle* that Morning, and how was she situated with regard to the *Queen*?

A. I did not see her.

Q. What Time did the Red Division get into their Station ahead of the Admiral, in the Evening of the 27th?

A. It was between Seven and Eight o'Clock before we all got into our Stations; as near as I can recollect, we had such a long Way to run.

Q. Just before you moved from the Rear to the Van, how was the *Formidable* situated from you, and at what Distance?

A. She appeared about three or four Points broad on our Weather-bow, Distance I cannot recollect.

Q. Did you take notice of the *Victory* at that Time?

A. I saw her frequently.

Q. How far were you from her at that Time?

A. I believe about two Miles, according to the Line of Battle.

Q. Can you inform the Court what general Signals were made on board the *Queen*, from the Time she was on the Starboard Tack?

A. As to Time I cannot be exact. The first Signal, after wearing, was to form the Line of Battle ahead at a Cable's Length asunder. Soon after that a Frigate, I believe the *Proserpine*, hailed us to form a close Line astern of the *Victory*, and called our Ships into her Wake. That Signal was continued till a second Frigate hailed us, with Admiral Keppel's Orders to lead the Fleet ahead. At that Time the Signal was continued out for the Line of Battle. I cannot recollect any more general Signals.

Q. Can you recollect the Time when you received the Orders to form ahead?

A. As near as I can recollect, it was somewhere about Five o'Clock, or rather after.

Q. Did you take notice of any Signals flying on board the *Formidable*, as you passed her to go ahead?

A. I did not.

Q. Did you ever look at her with a Glass?

A. No, I do not recollect I did.

Q. At the Time you saw the *Formidable* come out of Action, was the *Queen* laying to, or under Way?

A. I have already said she was at that Time under Topgallant Sails, doubling upon the Rear of the Enemy.

Prisoner's Question :

Q. I will mention one short Quotation from the Log, and ask a Question upon it. " At Eight o'Clock, in making sail through our Fleet to get ahead, observed a great Part of the Ships disabled in their Masts and Rigging."

How long was it after that that the *Queen* got ahead into her Station?

A. I cannot exactly confine myself to Time; I think she was in her Station about Eight o'Clock, or very soon after.

Court asked,

Q. When you edged away with the *Victory* in the Afternoon, at what Time in the Evening did you haul your Wind?

A. After our Division had got into their Stations a little after Eight o'Clock, we shortened Sail and hauled our Wind—we went large till we were in our Station, which was a little after Eight o'Clock.

Withdraw.

Adjourned, being Half after Three, till Tomorrow Morning at Nine o'Clock.

EIGHTEENTH DAY.

SATURDAY, the 1st of MAY, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

Robert Hogart, *Midshipman of the Formidable, sworn.*

Prisoner's Questions :

Q. Give an Account to the Court, what Signals were repeated on board the *Formidable* after the *Victory* passed to Leeward of her in the Afternoon of the 27th, beginning with the first of them.

A. Immediately after the *Victory* passed to Leeward of the *Formidable*, the Signal for the Line was repeated—That was kept up for some Time, and then hauled down—then the blue Flag was hoisted alone at the Mizzen-peak; then that was hauled down, and the Signal for the Line hoisted again; and afterwards the blue Flag was hoisted underneath the Signal for the Line, and different Ship's Pendants thrown out, before the *Fox* hailed the *Formidable*.

Q. Were the Signal for the Line, and the blue Flag under it, kept up till Night?

A. Yes.

Prisoner had no further Questions to ask.

Court's Questions :

Q. Did you keep any Minutes of those Signals?

A. I kept Minutes of the Signals before the Action, but none that Day.

Q. Mention the Time of making those Signals, or how long they were kept up.

A. I cannot charge my Memory with the Times.

Q. Was the Signal for the Line immediately hoisted on hauling down the blue Flag?

A. It was.

Q. Was there any Time in the Afternoon, the Signal for the Line or the blue Flag was not flying?

A. No, I cannot say there was.

Q. Did you see all those Signals you have mentioned flying yourself?

A. Yes, I did.

Q. Were they made with Guns, or without?

A. The Signal for the Line was with a Gun.

Q. Was the Signal for bearing down made with a Gun?

A. I do not recollect.

Q. Was you appointed to observe Signals on board the *Victory*, and to repeat them?

A. Yes, on board the *Formidable*.

Q. Did you see the *Arabusa* while the *Formida-*

ble was on the Larboard Tack, immediately after you came out of Action?

A. I cannot say I did.

Q. What is the Signal for the Line of Battle?

A. The Union at the Mizzen-peak, a blue Flag with a red Cross underneath.

Q. Did you repeat the Signals, having seen them fly on board the *Victory*?

A. Yes.

Q. Did you do it of yourself, or by any particular Person's Orders, and who?

A. By Order of the Vice-Admiral.

Q. Did you see the *Arabusa* any Time in the Afternoon, and about what Time?

A. I cannot recollect the Time, but I did see her towards the Evening.

Q. What Signals had she flying at that Time?

A. She had the Signal for the Line, to the best of my Remembrance; I cannot recollect whether she had any other.

Q. Was it from seeing the Signal for the Line flying on board the *Victory*, that you repeated it?

A. Yes.

Q. Were you stationed on the Poop that Afternoon?

A. I was going backwards and forwards between the Poop and Quarter-deck—I was not stationed in any particular Place.

Q. Where was you at the Time the *Fox* hailed the *Formidable*?

A. Upon the Quarter-deck.

Q. Did you hear the Message that was delivered by the *Fox*?

A. No, I did not.

Q. Did you hear the Answer that was returned to the Message?

A. No.

Q. Can you tell about what Time the *Fox* came down to the *Formidable*?

A. No.

Q. Had you any Watch that Night, or was you upon Deck?

A. I was upon Deck all Night.

Q. Did you see the *Victory's* Lights that Night?

A. I do not recollect whether I did or not.

Q. Do you know whether the *Formidable's* Lights were burning that Night?

A. I cannot charge my Memory about the Lights; but to the best of my Recollection the Poop-light was burning.

Q. How long was it after you first saw the Signal for the Line on board the *Victory*, that you made it on board the *Formidable*?

A. To the best of my Remembrance, it was repeated directly.

Q. You have said you was in Practice of keep-

ing Notes of the Signals; how came you to leave off that Practice immediately after the Action?

A. I cannot say the Reason of it.

Q. Are you certain you took no Notes after the Action?

A. Yes; we took them after the Action, but not that Day.

Q. About the Time the *Fox* spoke to the *Formidable*, can you tell how the *Victory* bore from the *Formidable*?

A. To the best of my Remembrance, the *Victory* bore about two Points on her Lee-bow—I cannot speak to the Distance.

Q. What Ships were astern of you at that Time?

A. I recollect seeing some Ships astern of us, but I cannot say what Ships, nor how many.

Q. How near might be the nearest Ship astern of the *Formidable*?

A. I cannot say to the Distance; but it was not a great Distance from us.

Q. Was there a Three-decked Ship astern of you?

A. I do not recollect.

Withdrew.

Daniel Guerin, *Midshipman of the Formidable, sworn.*

Prisoner's Questions:

Q. Do you remember the *Fox* coming under the *Formidable's* Stern, and about what Time, on the 27th of July?

A. I remember the *Fox* coming under the *Formidable's* Stern near Sun-set.

Q. What Words do you remember to have heard delivered from the *Fox*?

A. I heard Captain *Windsor* say, that Admiral *Keppel* desired Sir *Hugh Palliser's* Division to bear down into his Wake.

Q. Did you hear any other Words?

A. No; I could not hear any other Words for the People cheering on board the *Fox*.

Q. What Answer did you hear me make to the *Fox*?

A. I heard you answer, "Very well, very well, I have made the Signal for that Purpose."

Q. Where was you when this passed?

A. Close to Sir *Hugh Palliser*, in the upper Stern-gallery.

Q. Are you sure it was the upper Stern-gallery?

A. I am sure.

Q. Do you remember handing up a blue Flag from the Quarter-deck to the Poop, to be hoisted under the Signal for the Line?

A. No; I did not hand it up, it was already on the Poop; but I ordered Mr. *Hogart*, the other Signal Midshipman, to hoist it under the Signal for the Line, and he immediately did it in my Presence.

Q. Do you remember a Number of Ship's Pendants being let fly, and was it about the Time you are speaking of; and was it before or after the Time the *Fox* spoke to us?

A. I remember several Ship's Pendants being flying before the *Fox* spoke to us.

Court's Questions:

Q. Was the blue Flag flying at the same Time at the Mizzen-peak with the Pendants, and before the *Fox* joined you?

A. The blue Flag was flying at the Mizzen-peak with the Pendants, before the *Fox* joined us.

Q. Where was you stationed?

A. On the Quarter-deck.

Q. To any particular Employ?

A. I was ordered by Sir *Hugh Palliser* to use my best Endeavours to assist in repairing the Rigging after the Action.

Q. Was you stationed to observe Signals?

A. I was.

Q. Did you take any Notes of the Signals that were made the Day of the Action?

A. I did in the Morning before the Action, but none after the Action began.

Q. Do you know whether the Message from the *Fox* was delivered by one Person alone, or was it repeated?

A. By one Person alone, with a speaking Trumpet; I did not hear it repeated by a second Person.

Withdrew.

William Rhodes, *Captain's Clerk, of the Formidable, sworn.*

Prisoner's Questions:

Q. Do you remember seeing the *Fox* come under the *Formidable's* Stern in the Evening of the 27th of July, and about what Time, to the best of your Remembrance?

A. I remember seeing her:—The Sun was going down;—I will not say it was set.

Q. Where were you when she passed under the *Formidable's* Stern?

A. I was upon the Quarter-deck, and stepped into the Captain's Cabin to attend to the Message, supposing she had one to deliver.

Q. Did you hear any, and what Message from the *Fox*?

A. The Captain of the *Fox* said, it was "the Admiral's Desire that the Ships of your Division should bear down into his Wake."—The Word was Desire, and not Order, I think.

Q. Did you hear any other Words?

A. I heard none but the same Words repeated, to make them more distinct.

Q. Did you hear any, and what Answer returned by me?

A. You answered, "Very well, I have repeated their Signals for that Purpose."

Q. Where was I standing at that Time?

A. In the Captain's Stern-gallery—the upper Stern-gallery.

Q. Did you go from the Captain's Cabin to the Quarter-deck, to endeavour to hear if any Thing more was said, when she shot under our Lee; and did you hear any Thing more, except the Cheering?

A. I observed the People preparing to cheer from the *Fox's* Forecastle, as she turned round our Larboard-quarter, and saw the People pointing to the Rigging of the *Formidable*, and seeming surprised; but I heard no more of the Message. I stepped immediately back to the Foot of the Poop-ladder, and saw them cheer.—Our People did not immediately return it, being busily employed; and many of them seemed to take no Notice of the Frigate till they heard the Cheer, but then prepared to return it.

Court's Questions:

Q. Did you hear the Vice-Admiral return any other Answer or Message to the *Fox* than you have already related?

A. I heard no other Message but what I have related;—it was, Very well, and that he had repeated the Signals for that Purpose. I further recollect that it struck me at the Time, that several of the Ships had bore down before the Message was delivered, as I noticed on the Quarter-deck.

Q. Was the Message which was delivered from

on board the *Fox* repeated by the same, or any other Person?

A. It was repeated, but I cannot say whether by the same or any other Person.

Q. What Space of Time was there between the Delivery of the Message and the Cheering?

A. The Cheering from the *Fox* was immediately after the Message—before it was well concluded.

Q. Was the Cheering before the Vice-Admiral answered?

A. No, it was after.

Q. Did not you say that you went from the Gallery upon the Quarter-deck upon the Larboard Side; that there you saw the *Fox* come up, and the People preparing to cheer, and pointing to the *Formidable*, and that you returned to the Poop-ladder before you heard the Cheering?

A. What I heard was prior to her turning round our Larboard-quarter;—seeing them preparing to cheer, I stepped back to hear it.

Q. After the Vice-Admiral had answered the Message, did not you say you stepped back upon the Quarter-deck, to hear if there was any farther Message?

A. No; it was to attend to the Cheer.

Q. Were there more Cheerings than one?

A. Three Cheers, as is commonly given from one Ship to another.

Q. You heard the first Cheering while you were in the Gallery?

A. Whilst in or returning from it; it was during the Time of my stepping back that the Cheering began, and I saw the People with their Hats upon the Forecastle.

Q. Had they cheered before that?

A. No.

Q. Was any body in the Stern-gallery with the Vice-Admiral?

A. There was some one, but I will not pretend to say who; and I never asked any Questions.

Q. You have said that some of the Ships were bearing down before the *Fox* came to the *Formidable*—Did those Ships that were bearing down remain in the *Formidable's* Wake, or go down to the Admiral's?

A. Some of them appeared at that Time, from the *Formidable*, to be nearly in the Admiral's Wake—the *Ocean* in particular.

Q. As you have mentioned the *Ocean*, do you recollect whether she went a great deal from the Wind?

A. I am no Seaman; I cannot answer that.

Q. Was her Stern to you?

A. I cannot say.

Q. What was your Duty during the Day of the Action?

A. At the Time of the Action I was stationed in the Gun-room, at the Trumpet from the Wheel, to deliver Orders from the Quarter-deck to the Lower-deck, but had no particular Duty to perform after the Action ceased.

Withdrew.

The Prisoner now addressed the Court as follows:

"Mr. President,

"I had summoned Sir John Hamilton and Captain Keith Stewart, the better to ascertain when the Red Division left my Station in the Rear, and when they got into their proper Station ahead; but both these Points have been so much spoken to by the Witnesses already examined, particularly the Captain and Master of the *Queen*, that I do not think it necessary to call either of those Gentlemen. My Trial has already engaged more

Time than I could wish, and it becomes me, as well for the Sake of the public Service, as from Attention to the personal Convenience of the Members of this Court, to abridge my Examination of Witnesses as far as is consistent with the due Exposition of the Facts necessary for the Court's Information."

He then desired that the Judge-Advocate might be permitted to read the following Letters and Papers, which were read accordingly, viz.

Three Letters from Admiral } 24th July, 1778;
Keppel to Mr. Stephens; } 30th July, 1778;
Secretary to the Admiralty, } and
dated the } 20th Aug. 1778.

Also the List of Killed and Wounded, and the narrative Part of Admiral Keppel's Journal, from the 24th to the 28th of July inclusive, both which were inclosed in the Admiral's afore-mentioned Letter of the 30th July, 1778; References to, or Copies of, all which Letters and Papers are as follows:

Victory, at Sea, Five P. M. 24th July, 1778.

"SIR,

"I dispatched the *Peggy* with my Letter to you of Yesterday Afternoon, and about an Hour after she left me the *French* Fleet tacked, and stood towards the King's Fleet, the Wind at W. N. W. As Night was so near, and Action in the Night always to be avoided, I brought the Fleet to with the Larboard Tack, leaving the Option in the *French*. It blew very hard in the Western Quarter great Part of the Night, and in the Morning the *French* Fleet was seen to the N. W. one of their Ships crippled in her Foretopmast, one of Vice-Admiral Sir Hugh Palliser's Division in the Loss of a Maintop-sail-yard. The *French* have been in the Wind's Eye all Day, and have had the Choice with them constantly to come to Action. Both Fleets are now standing to the S. W. *Ushant* bearing S. 54° 00', E. 22 Leagues. The *French* spread with their Frigates so greatly, that I should fear single Ships attempting to join the Fleet under my Command would run much Risk of being intercepted.

I am,

SIR,

Your most obedient
humble Servant,

A. KEPPEL.

P. S. We count the *French* Forty Sail, great and small.

A. KEPPEL."

Philip Stephens, Esq.

Victory, at Sea, July 30, 1778.

"SIR,

"MY Letters of the 23d and 24th Instant, by the *Peggy* and *Union* Cutters, acquainted you, for their Lordships Information, that I was in Pursuit, with the King's Fleet under my Command, of a numerous Fleet of *French* Ships of War.

"From that Time, till the 27th, the Winds constantly in the S. W. and N. W. Quarters, sometimes blowing strong, and the *French* Fleet always to Windward going off, I made use of every Method to close in with them that was possible, keeping the King's Ships at the same Time collected, as much as the Nature of a Pursuit would admit of, and which became necessary from the cautious Manner the *French* proceeded in, and the Disinclination that appeared in them to allow of my bringing the King's Ships close up to a regular Engagement: This left but little other Chance of getting in with them, than by

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seizing

seizing the Opportunity that offered, the Morning of the 27th, by the Wind's admitting of the Van of the King's Fleet under my Command leading up with, and closing with, their Center and Rear.

"The French began firing upon the Headmost of Vice-Admiral Sir Robert Harland's Division, and the Ships with him, as they led up; which Cannonade the leading Ships and the Vice-Admiral soon returned, as did every Ship as they could close up: The Chace had occasioned their being extended, nevertheless they were all soon in Battle.

"The Fleets being upon different Tacks, passed each other very close; the Object of the French seemed to be the disabling the King's Ships in their Masts and Sails, in which they so far succeeded, as to prevent many of the Ships of my Fleet being able to follow me when I wore to stand after the French Fleet. This obliged me to wear again, to join those Ships, and thereby allowed of the French forming their Fleet again, and range it in a Line to Leeward of the King's Fleet towards the Close of the Day; which I did not discourage, but allowed of their doing it, without firing upon them, thinking they meant handsomely to try their Force with us the next Morning; but they had been so beaten in the Day, that they took the Advantage of the Night to go off.

"The Wind and Weather being such, that they could reach their own Shores before there was any Chance of the King's Fleet getting up with them, in the State the Ships were in, in their Masts, Yards, and Sails, left me no Choice of what was proper and adviseable to do.

"The spirited Conduct of Vice-Admiral Sir Robert Harland, Vice-Admiral Sir Hugh Palliser, and the Captains of the Fleet, supported by their Officers and Men, deserves much Commendation.

"A Journal of my Proceedings with the Fleet, since I left the English Land, accompanies this.

"I shall omit nothing that lays with me, to get the Ships as soon as possible in Condition to be able to proceed on further Service.

"I send Captain Faulkner, Captain of the Victory, with this Account to your Lordships.

I am, SIR,

Your most obedient and

very humble Servant,

Philip Stephens, Esq.

A. KEPPEL."

Secretary of the Admiralty.

Victory, Cowfand Bay, 20th August, 1778.

[See the Letter copied at large, p. 11.]

List of Men killed and wounded in the Action with the French Fleet, 27th July, 1778.

Ships Names.	Killed.	Wounded.	Officers wounded.
Monarch	2	9	
Exeter	4	6	Lieut. Nicholas Clifford, 2d of the Formidable.
Queen	1	2	
Shrewsbury	3	6	
Berwick	10	11	
Stirling-Castle	2	11	Lieut. William Samuel, 3d of the Shrewsbury.
Courageux	6	13	
Thunderer	2	5	
Vigilant	2	3	
Sandwich	2	20	Lieut. John M'Donald of the Marines, in the Pr. George.
Valiant	6	26	
Victory	11	24	
Foudroyant	5	18	
Prince George	5	15	Surgeon of the Elizabeth.
Vengeance	4	18	
Carried over	65	177	

Ships Names.	Killed.	Wounded.
Brought over	65	177
Worcester	3	5
Elizabeth	8	7
Defiance	8	17
Robust	5	17
Formidable	16	49
Ocean	2	18
America	1	17
Terrible	9	21
Egmont	12	19
Ramillies	12	16
	133	373

A. KEPPEL.

"Friday 24th July, 1778. Fresh Breezes, the Weather thick and hazy—At 1 P. M. upon its clearing up a little, saw through the Haze a Number of Ships on the Weather-quarter, bearing E. N. E. Wind at N. which I soon determined was the French Fleet; the King's Fleet was at this Time much dispersed.—25 Minutes past 1 I made the Signal for the Line of Battle, the Ships to bear East and West of each other.—Half past wore and stood a little while to Leeward, then laid the Maintopfail to the Mast to let the Ships get into their Station.—3. The French Ships standing with the Wind upon the Larboard-quarter, Wind at North.—Several of the Ships of the Fleet being far to Leeward, and being apprehensive they might not have seen the French Fleet, I directed Captain Bradby, of the Pluto Fireship, to go to Leeward to those Ships to acquaint them of it, and to direct them to make all the Sail they could to get into their Stations.—20 Minutes past 4, the French Ships standing to the Eastward, with their Topgallantails set, I made a Signal for the whole Fleet to wear together, and made Sail, let out the Reefs, and set Studdingails and Topgallantails, and stood after the French Ships to the N. E.—35 Minutes past, made the Signal for the Ships to bear N. E. and S. W. of each other—The French appear to be forming their Line of Battle—their sternmost Ships steering N. E. and their headmost Ships East.—5. Made the Signal for the Fleet to make more Sail.—Half past 5, Captain Sutton of the Proserpine came on board; I directed him to make all the Sail he possibly could ahead of the Fleet, and endeavour to keep in Sight of both Fleets during the Night, and if he should perceive the French Fleet to stand towards the King's Fleet, to burn false Fires till answered by one false Fire from the Victory; but if the French Fleet should stand from the King's Fleet, to shew Numbers of Lights, and stand after them, giving Warning of any Danger from the Land—Hailed the Milford, and gave the same Directions to her Captain.—6. Hauled down the Signal for the Fleet to make more Sail—the French Fleet steer N. E. by N. Wind North.—Half past 6, set the Mainfail.—Half past 7, the Wind freshening, hauled down the Studdingails, took in the Topgallantails, and hauled up the Mainfail.—Half past, took the Reefs in the Topsails—the French Fleet tacked and stood towards the King's Fleet.—Three Quarters past, made the Signal for the Ships to Windward to bear down into my Wake, and bore up myself, to let the Ships to Leeward get into their Stations.—50 Minutes past, altered the Signal for the Line of Battle to North and South.—8 o'Clock, brought to, Wind at W.—made the Signal for the Flag Officer commanding in the third Post, to bring to, with the Larboard Tack on board—I determined to lay to with the King's

King's Fleet, to leave to the *French* to bring on Action in the Night, if they chose to risk it.—Half past 9—the *Milford* to Leeward burnt false Fires—Captain *Windsor* of the *Fox* came on board; I sent him astern to the Vice-Admiral, and the Ships of his Division, to direct them to close me as fast as possible.—2 A. M. took Two Reefs in the Fore and Maintopails, thick Weather, Wind W. S. W.—At Day-break saw nothing of the *French* Fleet, the King's Fleet much dispersed.—A Quarter before Six, saw several Ships ahead on the Weather-bow, which I plainly discover to be the *French*, Wind W. by S.—6. I made the Signal for the Line of Battle N. E. and S. W.—sent an Officer on board the *Thunderer* to tell Captain *Walsingham* I would have him take his Station in the Line of Battle.—8. The Signal for the Line North and South, at a Cable's Length—Soon after, hauled down the Signal for the Line, and made the Signal for the whole Fleet to chase to Windward—the Body of the *French* Fleet N. W. Wind W. by N.—43 Minutes past 9, hauled down the Signal for the general Chase, as I was apprehensive some of the Ships might cripple themselves by carrying Sail, the *French* Fleet standing from the King's Fleet in the N. W.—Some of the Ships ahead not observing the Signal to leave off Chase, I made the Signal for calling in all Cruisers—The *French* kept their Wind—One of the *French* Ships that we had observed in the Morning to have carried away his Foretop-mast, and separated herself from the Fleet, we now perceive fallen into her Station in their Line.—Three Quarters past 11, the *French* Admiral tacked.—At Noon the Body of the *French* Fleet W. N. W. 7 Miles.

"Saturday 25th July. Light Airs and cloudy.—Soon after 12, made the Signal for the Fleet to tack—the Fleet well together.—Half past, it became very hazy, the Body of the *French* Fleet N. W.—At 1 P. M. clear.—From the Observation of different Persons, it is agreed, the *French* Fleet consists of 40 Sail, great and small—we distinguish from 30 to 32 to be of the Line of Battle.—4 o'Clock, the Van of the *French* Fleet W. by N.—the Center N. W. by W.—and the Rear N. W. by N.—the Wind W. by N.—7. The Wind flying about to the S. W. by W. made the Signal for the Line of Battle ahead, at a Cable's Length asunder.—About this Time the *French* Fleet tacked again.—34 Minutes past 7, made the Signal for the whole Fleet to tack together, and soon after hauled down the Signal for the Line of Battle, and immediately tacked—the *French* Admiral with his Topails and Courses set.—8. Hailed the *Milford*, and ordered her to keep between the *French* Fleet and us during the Night, —gave the same Orders to the *Porpoise*—set the same Sail as the *French* Admiral.—Half past, hauled the Mizentopail.—11. Blowing very fresh, took Two Reefs in the Fore and Maintopails.—About 12, a hard Squall of Rain, with very thick Weather—Perceiving some Lights on the Lee-bow, which we took for the *French* Fleet, hauled the Mainfall up.—4. Continues to blow very fresh.—5. Saw the Vice-Admiral of the Blue's Division ahead on the Lee-bow, which are the Ships we had seen in the Night, and taken for the *French* Fleet—saw nothing of the *French* Ships—Frigates on the Weather-bow carrying Sail—very hard Squalls—A little after 5, the Vice Admiral of the Blue made the Signal for seeing 17 Sail in the N. W.—made Sail—the *Elizabeth* to Windward, hoisted her Colours on seeing the *French* Fleet—soon after saw them from the *Victory*.—7. The Wind flying to the W. by

N.—made the Signal for the whole Fleet to tack.—9. Took third Reef in the Topails, blowing strong—the *French* Fleet keep their Wind under such Sail as to keep Company together, preserving as much as they can their Distance from us.—At Noon, the *French* Fleet N. W. by W. to W. by S.—the Wind at N. W. by W.

"Sunday 26th July. Squally with Showers of Rain.—4. More moderate—let the third Reef out of the Topails, and set the Stayails. 5. Made the Signal to tack—got down the Topgallant-yards.—6. The Body of the *French* Fleet being a little abaft the Beam, tacked again in order to near them before Night.—7. The *French* Fleet from the W. N. W. to W. S. W.—Wind at W.—Lay up S. S. W.—the *French* Admiral W. 11 Miles.—10. Squally with hard Rain—took one Reef in the Fore and Maintopails—hauled the Mizentopail.—At 3 A. M. more moderate, set the Mizentopail.—At Day-break discovered the *French* on the Weather-beam, stretching forward to the Bow—the Wind at W. and W. by S.—they keeping their Wind.—7. Got up Topgallant-yards.—8. Out third Reef of the Topails—the *French* Admiral's Ship bore W. N. W.—the *French* Admiral at Times his Courses up—Some of the *French* Ships appearing to have fallen to Leeward of the rest—the Vice-Admiral of the Red made the Signal for the Ships of his Division to chase, and made Sail himself.—11. The *French* Admiral tacked—I immediately made the Signal and tacked.—Ever since we have been in Chase of the *French* Fleet, it has been in their Power to bring on an Action, if they had been so inclined.

"Monday 27th July. Fresh Breezes and cloudy Weather.—8. Squally—took in the 3d Reef of the Topails—the *French* Fleet bore from W. S. W. to S. by W.—Wind S. W.—Course W. N. W. at Midnight—Fresh Gales and cloudy—at Daylight saw the *French* Fleet to Windward—the Vice Admiral of the Red and his Division well on the Weather-beam—the Vice of the Blue on the Lee-bow.—10. The *French* Admiral tacked to the Southward—I instantly made the Signal and tacked after them—Half past 10.—the Wind at this Time veered, so as to let the King's Fleet lay up, for the Body of the *French* Fleet.—11. The *French* Admiral tacked again—Half past 11. observing the *French* engaged with the headmost of Vice-Admiral Sir Robert Harland's Division, as they lay up—I made the Signal for Battle, and stood on in the *Victory*, the *French* Line on the contrary Tack, with their Heads to the Northward, at 5 Minutes before 12.—Perceiving we were near up with the *French* Admiral, I ordered the Mainfall to be hauled up. Soon after, the *French* Admiral, with the white Flag at the Maintopmast-head, began to engage the *Victory*, who had reserved her Fire till now.—Having passed the *French* Admiral, came on to their Vice-Admiral of the White, who bore down and engaged us. The *Victory* continued passing their Line till a Quarter before 1.—When we passed the Sternmost of their Ships—Vice-Admiral Sir Robert Harland, and all the Ships ahead of me, engaged the *French* as they passed by them, as did likewise Vice-Admiral Sir Hugh Palliser, with the Ships with them astern.

"Tuesday, 28th July. Fresh Breezes and cloudy Weather.—20 Minutes past 1, made the Signal and wore, and laid the Ships Heads towards the *French* Fleet.—2. Made the Signal for the Line ahead, perceiving several of the Ships so far disabled in their Masts and Sails, as not to be able to join me.—3. I wore again towards them—which gave an Opportunity for the *French* to form

form their Fleet again, and range it in a Line to Leeward of the King's Fleet, towards the Close of the Day—Stood on all Night with a moderate Sail, the Ships in a Line of Battle—the French Fleet in a Line to Leeward.—11 o'Clock, the French made some Signal by Rockets—at Day-break, perceived the French had taken the Advantage of the Night to go off—saw Three Sail to Leeward, which were French Ships, and bore away immediately upon seeing us; I made the Signal for some Ships to chase them—but most of the Ships being crippled in their Masts and Sails, I called them in again—Saw some Sails to Leeward from the Mast-head; considering, the Wind and Weather being such, that the French could reach their own Land, before there was any Chance of the King's Fleet getting up with them, in the crippled State it was, in Masts, Yards, and Sails, I hauled to the Northward, to get the Channel open.—5 A. M. brought to, for the Ships to get themselves to Rights in their Masts and Rigging—At Noon made Sail—Fresh Breezes."

The Prisoner next requested, that the Judge-Advocate might be permitted to read a Paper, containing some Considerations in Addition to those already offered in the Defence, which had been read:

But the Court having previously agreed, that although the Prisoner had declined to call Sir John Hamilton and Captain Keith Stewart, it will, nevertheless, be proper to take their Examinations; also the Examinations of the two Persons whose Names were given in by Sir Charles Douglas; as likewise the Examination of Lieutenant Winkworth of the Formidable. The Prisoner was acquainted with this Resolution, and the reading his Paper was postponed till after the aforementioned Witnesses shall be examined.

The Witnesses had Notice to attend.

Robert Spence, late of the Stirling-Castle, sworn.

Court's Questions:

Q. Were you on board the Stirling-Castle at the Time of the Action on the 27th of July?

A. Yes.

Q. Was you upon Deck at Day-break on the 28th of July?

A. Yes; just before the Break of Day.

Q. What Ship was the nearest to you at that Time?

A. The *Berwick*, I think.

Q. How did she bear from you?

A. We were rather on her Starboard-quarter.

Q. Did you see any Ship abreast of you?

A. I saw a Ship rather to Windward of us.

Q. Give an Account of what you know concerning that Ship.

A. I took her to be a Three-decked Ship at that Time.

Q. What Distance was she from you?

A. She was not so near as to be within Hail; but I cannot tell the Distance, it being dark in the Morning.

Q. Have you been always bred to Sea?

A. Yes.

Q. What Observations did you make of that Ship?

A. The first Observation I made of her was, I saw her coming up upon the Starboard-quarter: I saw the Lights going backwards and forwards through her Deck-ports, but could have no further Description of her till she passed the Starboard-

bow, when I saw her Ensign flying, which I could not see before.

Q. What else did you see flying?

A. I saw the Flag.

Q. Where did you see the Flag, and what Colour was it?

A. I saw the Flag at the Foretopmast-head, but I do not know the Colour of it.

Q. What Colour was her Ensign?

A. I do not recollect; I took no more Notice of her after she had passed us.

Q. Was it light enough to distinguish Colours or Flags?

A. No; it was just before the Break of Day.

Q. Did you know at the Time that Ship to be the *Formidable*?

A. No.

Q. Did you see any distinguishing Lights at her Stern, Poop, or Top?

A. No; I cannot recollect.

Q. Are you sure she had a Foretopgallantmast?

A. I cannot recollect.

Q. Did you see that same Ship after Day-light?

A. No; I took no further Notice of her, Withdrew.

George Ayton, late of the Stirling-Castle, sworn.

Court's Questions:

Q. Did you belong to the Stirling-Castle at the Time of the Action of the 27th of July last?

A. I did.

Q. Were you upon Deck at Day-break on the 28th of July?

A. Before Day-break.

Q. What Ship was the nearest to you at that Time?

A. I understood the *Berwick*.

Q. At what Distance was she?

A. I cannot recollect; but I had a private Reason for inquiring if it was the *Berwick*.

Q. Was she Five Miles or Five Cables Lengths distant, or how far?

A. I suppose she might be Half a Mile, or less; it was in the Middle of the Night; she was in Sight, and it was the darkest Part of the Night.

Q. Was there any Three-decked Ship in Sight, just before Day-break, to Windward of you?

A. Before Day-break, I saw a Ship rather to Windward; but I could not determine whether she was a Two or Three-decked Ship, upon first seeing her.

Q. Did you afterwards determine that?

A. Yes.

Q. What Ship was she?

A. I understood her to be the *Formidable*.

Q. Did you know her to be the *Formidable* of your own Knowledge?

A. She engaged the Attention of every one upon the Quarter-deck:—I saw a blue Flag flying at the Foretopmast-head, after there was sufficient Light to distinguish it. When she was abreast of the Stirling-Castle, I then could discern a Flag at the Foretopmast-head, but there was not Light sufficient to determine the Colour; but I thought, if it was a white Flag, as one of the French Ships carried a white Flag, there might be Light sufficient to distinguish the Colour of White, though not of Red or Blue, or any dark Colour. As she went forwards, and got a good Way ahead, there was then Light sufficient to enable me to distinguish the Colour of the Flag to be blue. I then went from the Starboard to the Larboard Side of the Ship, being anxious, as soon as possible, to get Sight of the French Fleet.

Q. Was

Q. Was the Weather such, that you might be deceived?

A. It was cloudy, but not so as to lead me to suspect I might be deceived.

Q. Was it light enough that you could distinguish the *Berwick*, the Ship you particularly wanted to look to?

A. After getting Sight of the Ship in question, she so much engaged my Attention, that I never afterwards thought of the *Berwick*.

Q. As the Day opened more, did you pay any Attention to the Ship with the blue Flag?

A. After being upon the Larboard Side of the Ship, endeavouring to get Sight of the *French Fleet*, I recollect (but in this I am not so clear) its being mentioned, that the Ship in question had shewn her Ensign.

Q. Did you see the Ensign?

A. I cannot say I did not; I went forward, and looked towards the Place where I thought I left that Ship, and thought I saw that same Ship with her Ensign, as well as one or more Ships with blue Ensigns. I do not recollect now, that I took care to observe if that Ship had a blue Flag at the Foretopmast-head; for at that Time I was indifferent, and I scrupled every Moment when I went forward, thinking that I might thereby not be among the first (which I wished) that should see the *French Fleet*.

Q. When that Ship was upon your Starboard-quarter, coming up, did you see the Lights of the *Queen*, or at what Time did you see them?

A. I do not recollect at that Time.

Q. Are you sure that the Ship you saw had a Foretopgallantmast?

A. From the Recollection of her Flag, I think she had a Foretopgallantmast.

Q. As it was light enough to distinguish Colours, when you saw the Flag, which was blue, as you suppose, at the Foretopmast-head, did you see the *Queen*, with a red Flag at the Foretopmast-head, at the same Time?

A. No, I do not recollect.

Q. Did you observe whether this Ship had two Stern-galleries?

A. My Observations were not so minute.

Q. Did you take Notice of any Top, Poop, or Stern Lights on board that Ship?

A. No, I did not observe any.

Q. As you did not observe she had two Stern-galleries, from whence arises your Idea that she was a Three-decked Ship?

A. She was so near, that, from her Height, I could determine she was a Three-decked Ship.

Q. Where were you quartered during the Action?

A. In the Cabin and Stern-gallery, to observe Signals.

Q. Did you observe any other Ship to pass you to Windward, but that Ship which you suppose to be a Three-decked Ship?

A. I have no clear Recollection about it.

Q. Have you been in Practice of looking through a Glass, and did you look at that Ship with a Glass?

A. No, I did not.

Withdraw.

Honourable Keith Stewart, Captain of the *Berwick*, sworn.

Court's Questions:

Q. At what Time did the Red Division form in the Rear of the Admiral in the Afternoon of the 27th of July?

A. I do not know.

Q. At what Time did the Red Division leave the Rear, and take its Station in the Van?

A. As the *Berwick* was not with Vice-Admiral Sir Robert Harland at that Time, I cannot positively say.

Q. Where was the *Berwick* at that Time?

A. The *Berwick* never passed the *Victory* upon the Larboard Tack to the Northward.—At the Time the Signal was made for forming the Line upon the Starboard Tack, the *Berwick* was then astern of the *Victory* before she wore, and ahead upon the Starboard Tack; and immediately upon her Signal being made, formed in her Station ahead of the *Victory*.

Q. At what Time did the Vice-Admiral of the Red join you, and take his Place in the Van, ahead of the *Victory*?

A. I cannot positively say.

Q. Did you at any Time in the Afternoon see the *Formidable*?

A. Not that I recollect.

Q. What was the Situation of the *Berwick* in the Morning of the 28th, about Day-break?

A. In her Station in the Line of Battle, astern of the *Cumberland*, and ahead of the *Stirling Castle*.

Q. Did you see the *Formidable* at that Time, and if you did, what was her Situation?

A. I did not at Day-light; but in the middle Watch I saw her upon our Starboard-quarter, or thereabouts.

Q. Did you see her soon after Day-light came on?

A. Not to pay any Attention to her.

Q. Do you recollect at what Time in the middle Watch you saw her?

A. I cannot particularly recollect; it might be about Two o'Clock.

Q. Was there any Ship upon your Weather-quarter at Day-break?

A. Whether the *Stirling Castle* was right astern, or upon the Weather-quarter, I cannot say, but she was there or thereabouts.

Q. At the Time you saw the *Formidable* in the middle Watch, did you see the *Queen* also?

A. Not only then, but all Night long.

Q. At what Distance was the *Formidable* from the *Berwick*?

A. I cannot positively say; but I could discern a Flag at the Foretopmast-head, but not distinguish the Colour.

Q. Had you any other Reason for supposing it was the *Formidable*, besides seeing the Flag?

A. None.

Q. Did you see any other Ships in the same Direction with that Ship you saw with a Flag?

A. I have confused Ideas about it, but not so as to speak as an Evidence.

Q. Could you see any Thing of the Lights on board the *Victory*?

A. Very frequently, at the Bow-sprit-end; but not constantly, owing to Ships between the *Victory* and us, which, as I apprehend, intercepted our Sight.

Prisoner's Questions:

Q. Did you continue upon Deck till Day-light?

A. I do not apprehend I was Ten Minutes, and I am sure not Half an Hour, off the Deck at any one Time the whole Night.

Q. Did you, at any other Time, take notice of the same Ship, and make the same Observations of her, you had done before Day-light?

A. I do not recollect how long I saw her: It might be Ten Minutes or a Quarter of an Hour, but I cannot say, as I did not pay much Attention to her at the Time.

A a

Q Might

Q. Might not you be deceived in fancying you saw a Flag there, at that Time of Night, at the Distance she was from you, and the Kind of Weather it then was?

A. I thought myself quite certain that I saw a Flag at the Foretopmast-head; and seeing Sir Robert Harland's Lights ahead, I concluded, and do conclude it was the *Formidable*.

Q. Did that Ship go ahead of the *Berwick* in the Night?

A. Whether she went ahead or astern, I did not observe.

Q. At Day-light, did you observe the *Robuste*, or any other Ship of the Blue Division, ahead or astern of the *Berwick*, or in any other Situation near her?

A. I did not.

Withdrew.

Sir John Hamilton, Bart. Captain of the *Hector*, sworn.

Court's Questions:

Q. Was your Ship one of the Red Division which took Place in the Rear of the Admiral in the Afternoon of the 27th July?

A. I was.

Q. At what Time did the Red Division take Place in the Rear?

Has Leave to look at his Minutes.

A. Between Three and Four, to the best of my Recollection.

Q. At what Time did the Red Division quit the Rear to take their Stations in the Van?

A. Between Five and Six.

Q. As you then passed between the Admiral and the Vice-Admiral of the Blue, how near were you to each of them at the Time you passed between them, and how did they bear?

A. I did not take notice of either Bearings or Distance.

Q. What general Signals were flying on board the *Formidable* and *Victory* at that Time?

A. The Signal for the Line was flying on board the *Victory*, and the Signal for bearing down.—They might be on board the *Formidable*, but I did not look.

Q. At what Time did the *Hector* get into her Station in the Van, in the Evening?

A. At or about Six o'Clock.

Q. Was the whole of the Red Division in their Stations at that Time?

A. I cannot say to the whole; most of them were.

Q. Just before the Red Division moved from the Rear to the Van, did you take notice how the *Formidable* bore with respect to the *Hector*?

A. She was wide upon the Weather-quarter.

Q. Were you only Half an Hour in going from your Station in the Rear to your Station in the Van?

A. We must have been more than that, without doubt, but I cannot be certain as to Time.

Q. Did you observe, at any Time, any general Signals made on board the *Formidable* after the Action?

A. I cannot be positive:—I think I saw the Signal for bearing down; but Ships between us and the *Formidable* often prevented my seeing her.

Q. Was you upon Deck at or before Day-break in the Morning of the 28th?

A. I was up all Night, and upon Deck at Day-break.

Q. Did you see the *Formidable* at Day-break, and whereabouts was she then?

A. I did not see her, that I recollect.

Withdrew.

Grosvenor Winkworth, late Mate, now Lieutenant of the *Formidable*, sworn.

Court's Questions:

Q. Had you any Conversation with Lieutenant Hills, relative to a Signal-book, in the Afternoon of the 27th July?

A. I had.

Q. About what Time, and what was the Conversation?

A. I cannot speak to Time—I observed Mr. Hogart hoist two Flags at the Mizzen-peak; upon which I asked Lieutenant Hills what that Signal meant—He said he did not know, but if I would send for the Signal-book he would look. I sent for the Signal-book, and found it to be the Signal for the Line of Battle ahead.

Q. What were the two Flags hoisted at that Time?

A. The Union Flag, and a Blue Flag with a Red Cross under it.

Q. How long were they kept flying?

A. I observed them flying most Part of the Evening—All the Evening, I believe.

Q. Can you recollect whether it was early or late in the Evening, or any Circumstance that may fix the Time when it was hoisted?

A. It was soon after the *Victory* passed us to Lee-ward on the Starboard-tack.

Q. In what Part of the Ship were you when you asked Mr. Hills the Question about the Signals?

A. On the Forecastle.

Q. Do you recollect what Sail the *Formidable* had set at that Time?

A. The Maintop-sail, and Mizentop-sail on the Cap, and the Foresail set, to the best of my Knowledge.

Q. Was there any Gun fired, to your Knowledge, when the Signal was made?

A. Yes, it was that made me look about to see what was the Signal that was hoisted.

Q. Was there one Gun or more fired?

A. I do not recollect—I am certain of one.

Q. Do you recollect whether the Mizzen was set?

A. I cannot speak positively—I believe it was.

Q. Do you recollect when the Main-sail was set?

A. I cannot speak to the Time.

Q. Do you remember its being set?

A. I do.

Withdrew.

The Court declaring they should not call more Witnesses, the Prisoner desired, that the Judge Advocate might be permitted to read the Paper he had before offered, containing his additional Observations.

The Judge Advocate read it, and the following is a Copy.

Mr.

Mr. President, and Gentlemen of the Court,

THE Examination of Witnesses being now concluded, I intreat, that the Court will permit me to add, to the Defence I have already offered, some Considerations, which either have not yet been submitted to your Attention, or have not been enforced so fully as their Importance may require. I feel, how much I have already exercised the Patience of the Court; and therefore I am extremely averse to intruding any farther Matter upon them. But I have so much at Stake on the Issue of this Trial, and the Activity of my Enemies has been so conspicuously exerted to fix Blame upon me, even where I deemed my Innocence most invulnerable; that should I, from a dangerous Excess of Confidence, pass over any Points, however immaterial they may sometimes have appeared to me, which my Enemies have essayed to strain into Importance, my Silence might be misunderstood, and a Conviction of the Obviousness of the Subject might be suspected to proceed from a Dread of Investigation.

Many Questions have been asked about the Practicability of shifting my Flag; and it is to the Honour of the Court, that they have been so assiduous in examining to a Point, on which my Enemies have so often laboured to ground a Censure of me. In my last Address to the Court, I only spoke generally to this Head. But I will now open my Mind upon it with Particularity.

The Imputation for not shifting my Flag refers to the Twenty-fifth Article of the Fighting Instructions, the Words of which are, that "if any Flag Ship be disabled, the Flag may go on board any Ship of his own Squadron or Division."

By this Instruction it is clearly optional in the Flag Officer to shift his Flag or not, according to Circumstances; and in my Situation the Afternoon and Evening of the Day of Action, so foreign and inapplicable did the Instruction appear to me, that, I own, nothing could be more distant from my Thoughts at the Time, than the Idea of shifting my Flag; for which I submit to the Court's better Judgment the following Reasons.

The Battle was over and the Signal for Battle hauled down; the immediate Renewal of the Action by the Admiral, when I had wore close to the Enemy, having been declined, for prudential Reasons, the Propriety of which I have no Right here to call in Question.—We were not pursuing an Enemy, nor steering towards one. But the Admiral, as he describes his own Motion in respect to the *French*, had wore and laid his Stern to them. On first describing this Manœuvre, which the Admiral stated to have been for collecting the Ships, he styled it an Appearance to run away. But recollecting himself, he afterwards, on the Judge Advocate's reading these latter Words, well observed, that it was better to omit them in the Minutes; and his Wishes were complied with.—The Enemy was not coming to attack us, but was forming to Leeward of our Fleet.—I knew, that my Ship would be refitted and ready for Action by Day-light next Morning; and every Motion of the Admiral indicated to me, that he did not intend to re-attack before the Morning. My Reasons for this Opinion were many, and are already before the Court. In Substance they are, the Red Division's leaving the Rear between Five and Six; the uncollected and unrefitted State of my Division at that Time and during the rest of the Afternoon till Night; the incomplete forming of the Center Division; the Distance of the *French* Fleet from us; the late Hour of the Red Division's getting into their Station ahead; and the Admiral's never shortening Sail, till Eight o'Clock in the Evening, to give the *Formidable* and *Vengeance*, and other crippled Ships, the Opportunity of collecting and gaining the Length of their Stations in the Line. These Circumstances, it should also be recollected, receive the strongest Confirmation from the Admiral's public Letter and the *Victory's* Log book.—Besides, to the shifting of my Flag many Things would have been essential. I must have shortened Sail, and laid to, which would have thrown me at a much greater Distance from my Station. We must have new reefed all the Tackle-falls, and repaired all the Gear necessary for hoisting out Boats; which would have retarded the Work going on for setting more Sail. The Ship, to which I should have shifted my Flag, must also have laid to, and this would have kept her more astern and out of her Station. The moving from one Ship to the other, with my Signal-colours, Necessaries, and Attendants, is an Operation, which would have required, as I conceive, some considerable Time.

All this being considered, shifting my Flag might have produced great Inconveniencies, by increasing the *Formidable's* Distance from her Station, and also keeping another Ship out of it. But I know of no good Purpose, which could have been answered. Nor do I conceive, that our Naval History will furnish an Instance of a Flag Officer's shifting his Flag under such Circumstances.

As to the Signal for the Line's being out, it is far from necessarily proving an Intention of immediate Renewal of the Action. The Inference in this Respect from a Line depends on Circumstances. If the Admiral had been standing with his Fleet towards the Enemy, I agree, that the Indication would have been strong indeed; and, as in that Case I certainly should have concluded, that his Object was to hasten on an Engagement before Night; so, without Doubt, I should have been forward to insure my having a proper Share of the
Glory

Glory of a second Action, either by endeavouring to bear down to engage the first Ship of the Enemy I could have fetched, or by shifting my Flag; of which Measures I should have preferred the one, which would have been likely to bring me into Action soonest and most effectually. This Assertion I expect the more Credit in; because it is in Proof, that, early in the Afternoon of the Day of Action, though my Ship came last out of the Engagement, and was the most damaged, yet I wore so instantly, and so closely to the Enemy, that my Ship was nearer to the *French* Fleet to renew the Fight, than the *Victory* or any other Ship of our Fleet. But the Admiral was not standing towards the Enemy. He had put his Stern to them; and there were all the other Indications I have already described to shew, that the Line was forming, not for an immediate Renewal of the Fight, but to collect all the Ships for Action early the next Morning. And here I beg Leave to take Notice of a Circumstance, which corroborates my Idea of the Admiral's Intention. At the late Trial I proposed it as a Question to a Witness; whether, from the Motions of the Admiral, and his public Letter, the Witness did not infer, that there was no Intention to re-engage till next Day. The Admiral strenuously resisted the putting such a Question; and the Court over-ruled it. This Circumstance will be found in Page 33 of the Trial printed by Authority. But I do ask, whether any thing could more evince the Admiral's Consciousness of the Sense conveyed by his own Words, than such a Dread to hear the Construction of them?

In the Course of the Trial, it has been asked, whether I made any Signal of Distress. The Twenty-second Article of the Fighting Instructions explains what this Signal is; and then the Twenty-third Article points out, how other Ships are to act, when such a Signal is made by Flag Ships, and it is thus expressed: "If the Admiral or any Flag Ship should be in Distress and make the usual Signal, the Ships of the Fleet are to endeavour to get as close up into a Line between him and the Enemy as they can, having always an Eye to defend him, if the Enemy should come to annoy him in that Condition." But taking these two Articles together, I submit to the Court, that they are only applicable to Flag and other Ships, which meet with some material Disaster during Battle, and when hard pressed by the Enemy; as is plain from the Terms, which suppose, either an Enemy to be actually attacking, or to be at least advancing for the Purpose. The Situation of the *Formidable* was not of this Kind; for, though she was so much astern, and to Windward of her Station, she was far from being within the Meaning of the Signal, the Enemy not making the least Attempt to annoy her after she had joined the *Victory*, but on the contrary being more to Leeward of the *Formidable* than the Body of our own Fleet.

In respect to sending a Frigate to the Admiral, to inform him of our not being able to keep up with him, I had no Frigate to send till about Eight o'Clock, as must appear to the Court from the Evidence of Sir *William Burnaby*; which shews, that early in the Afternoon the *Milford*, being the Frigate belonging to my Division, was called to the *Victory* by Signal, and was employed by the Admiral. But if she had not been so employed, I know not for what Purpose I should have sent her to the Admiral; for I concluded, that the Condition of the *Formidable* was so apparent as to make a Message unnecessary; especially as he omitted to throw out my Ship's Pendant with the Pendants of the Ships of my Division.

I shall now take a short Notice of some few other Things, as they severally occur to me.

I had brought to the Remembrance of the Court many striking Acts of Approbation of my Conduct by the Admiral, for the Sake of contrasting them with the criminating Tendency of his Evidence to this Court. There wanted nothing more to expose such Inconsistency; nor did I look for more. But Chance has thrown other Matter in my Way. Sir *William Burnaby's* Account of the Admiral's sending his Compliments to me, and of the Conversation about me the Day after the Engagement, is a new Proof, how well satisfied he was with my Conduct at that Time. If he had thought me disobedient, would he have been so eager in sending his Compliments to me, or so ready to exclaim, with a Sort of Feeling for me, that I had received more Damage than any of the Fleet?

It gave me singular Satisfaction to see, how clearly the Proofs of my having my distinguishing Lights burning in the Night after the Action came out at last. The two Men, who had the Care of the Lights, swore with so much Particularity and so convincingly, that all Doubts apparently vanished in the Minds of those who heard their Evidence. My Obligation to the honest Simplicity of these Men is very great; because by confirming the less positive Testimony of other Witnesses, it takes from my Enemies a Topic of Abuse, which was so long slighted by me, and so industriously circulated to mislead the public Opinion concerning me, that it had at Length grown into a serious Accusation.

I am also glad, that it has been in my Power to produce positive Testimony of the Reputation of the Signals; particularly the Signal for the Line, whilst I was within my Station. Very impartial Persons have, I believe, entertained a Doubt on this Head. But I

flatter myself, that it is entirely removed. I was myself quite certain that the Signals were repeated; because I was particularly observant of Signals the whole Day; and if I thought, that the Fact was still doubted, I should be induced to call a Witness, who could speak very positively to the Point of Signals, but stands in such a Relation to me, and has been to constantly attendant on me in Court, that I am not willing to call him, unless there is an absolute Necessity.

The dangerous State of the Foremast of the *Formidable*, which was the great Impediment to our carrying sufficient Sail to keep up with the Admiral, is a Point of great Importance to the clearing my Character from the Imputation of not using my utmost Endeavours to preserve my Station. I was therefore very anxious to give the Court the fullest Explanation on this Head; and though the Carpenter spoke confusedly in respect to the Time when he first knew of the Rottenness of the Mast, yet my Captain and the Lieutenant, who attended on the Forecastle, have given such ample Testimony of our having known of the Rottenness of the Mast at the Time, that I trust the Fact cannot be doubted by any unprejudiced Person. I well remember being informed of the Condition of the Mast, and the Anxiety I was under from the consequential Delay in bending our Foretop-sail.

On the Trial of Admiral *Keppel*, much Animadversion was made on Log-books. But in the Course of the present, it has appeared, how very little Dependence is to be had upon Entries in them, of Transactions in the Time of actual Engagement, or during the busy Moments of preparing for further Action. If I was disposed to retaliate on those, who have heretofore made such ill-natured Remarks on the Log-books of particular Ships, the Logs of Admiral *Keppel's* and Sir *Robert Harland's* Ships, and the Examinations of their several Masters, furnish ample Scope for the Severity of Animadversion. But it is not requisite for my Defence to say more, than that I trust the Court will not allow my Innocence to be affected by such uncertain and contradictory Records.

In the Course of Admiral *Keppel's* Evidence, he took Care to disclaim being an Accuser, and to thank God, that he was not so. But did the Tenor of his Evidence correspond with this Declaration? Was not his Evidence criminating in almost every Part? Have not he and his Friends all joined in the Accusation of me? Have they not sealed their Accusation with their Testimony upon Oath? Shall the open Accusation of others, however growing out of Self-defence, never be forgiven; and a secret Accusation, vainly attempted to be sustained by the Accuser's Oath, escape all Censure?—It is not fit, that I should pursue the Comparison further.—Let the Hearts of those, who hear me, feel the rest.

It is now Time to leave the Court to their own Judgment of the Case before them. If I have omitted any thing material, their Wisdom and Humanity will supply it. If I am mistaken in any of my Facts, or in my Reasoning upon them, their Candor will correct the Error, without hastily imputing to me an intentional Misrepresentation.

Mr. President, and Gentlemen of the Court,

To conclude, I flatter myself, that, as, at first, Admiral *Keppel's* Commendation of me, procured me the Approbation of my Sovereign; so your honourable Acquittal of me, now, will dissipate the Cloud of Prejudice, and restore me to the good Opinion of my Country.

Adjourned, being Four o'Clock, till Monday Morning at Ten o'Clock.

NINETEENTH DAY.

MONDAY, the 3d Day of MAY, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

The Court was immediately cleared.

After Six Hours spent in recurring to Matters, which had been delivered by the Witnesses examined in the Course of the present Trial, and in Deliberation;

Agreed to adjourn till To-morrow Morning at Ten o'Clock.

Adjourned accordingly.

T W E N T I E T H D A Y .

T U E S D A Y , the 4th of M A Y , 1779.

THE Court met according to Adjournment.
 The Prisoner was brought in, and Audience admitted.
 The Court was immediately cleared.
 Continued in Deliberation till Four o'Clock, and then

Adjourned till To-morrow Morning at Nine o'Clock.

T W E N T Y - F I R S T D A Y .

W E D N E S D A Y , the 5th Day of M A Y , 1779.

THE Court met according to Adjournment.
 The Prisoner was brought in, and Audience admitted.
 The Court was immediately cleared.
 After some Hours spent in Deliberation, the Court agreed upon their Sentence, which was drawn up and signed.

The Prisoner being brought in, and Audience admitted, the Judge Advocate pronounced Sentence as follows:

A T a Court-Martial assembled on board his Majesty's Ship the *Sandwich*, in *Portsmouth* Harbour, the 12th of *April* 1779, pursuant to an Order from the Lords Commissioners of the Admiralty, dated the 3d Day of *April* 1779, and directed to *George Darby*, Esq; Vice-Admiral of the Blue, and second Officer in the Command of his Majesty's Ships and Vessels at *Portsmouth* and *Spithead*, and held by Adjournment every Day afterward (*Sundays* excepted) till the 5th of *May* following, for the Trial of Vice-Admiral Sir *Hugh Palliser*, Bart. viz,

P R E S E N T ,

George Darby, Esq; Vice-Admiral of the Blue, President.

Robert Digby, Esq; Rear-Admiral of the Blue.

Captains *Sir Chaloner Ogle*,
Richard Kempenfeldt,
Joseph Peyton,
William Bayne,
Mark Robinson,
Adam Duncan,
Samuel Granston Goodall,

Captains *James Cranston*—till the Close of the third Day, from which Time he was unable to attend on Account of Sickness.
Robert Linzee,
John Colpoys,
George Robinson Walters.

The Order aforementioned having been accompanied with the original Minutes of the Proceedings of the Court-martial lately held for the Trial of the Honourable *Augustus Keppel*; and reciting that it appears by the said Minutes, that several Matters were given in Evidence at the said Trial respecting the Conduct and Behaviour of Vice-Admiral Sir *Hugh Palliser* on the 27th and 28th of *July* last, which demand strict Examination: The Court proceeded to examine Witnesses touching the said several Matters, and to try him for the same; and having maturely considered the whole—also what the Prisoner has alleged in his Defence, together with what has been given in upon Evidence in Support thereof—are of Opinion that his Conduct and Behaviour on those Days were in many Respects highly exemplary and meritorious: At the same Time cannot help thinking it was incumbent on him to have made known to his Commander in Chief the disabled State of the

Formidable,

Formidable, which he might have done by the *Fox* at the Time she joined him, or by other Means.—Notwithstanding his Omission in that Particular, the Court are of Opinion he is not in any other Respect chargeable with Misconduct or Misbehaviour on the Days aforementioned; and therefore they acquit him, and he is hereby acquitted accordingly.

GEO. JACKSON,
Judge Advocate.

G. DARBY,
ROBT. DIOBY,
C. OGLE,
RICH. KEMPENFELDT,
JOS. PEYTON,
WM. BAYNE,
M. ROBINSON,
ADAM DUNCAN,
S. GOODALL,
ROBT. LINZEE,
JN. COLPOYS,
G. R. WALTERS.

F I N I S.

Ex. J. M.

The Reader of Mr. *Keppel's* Trial is desired to correct the following Errors.

Captain *Marshall's* Evidence, P. 6, Col. 1, Line 13, instead of "Topgallantfalls were," read "were not."
Same Evidence, P. 7, Col. 2, Line 43, leave out the Words "the Rigging was disabled."
At the Bottom of Page 99, Col. 2, instead of the Words there used, read the following:
"As I am not among my Brethren of the Trinity-house, I shall not ask the Master any Questions."
Captain *Jervis's* Evidence, Page 153, Line 5 from the Bottom, instead of "Topfalls and Hallyards," read
"Topfail-tyes and Hallyards."
Same Evidence, Page 156, Col. 2, Line 34, for "Station," read "Situation."

Formalists which he might have done by the law at the time the joined him, or by other means. — Notwithstanding his Omission in that Particular, the Court are of Opinion he is not in any other Respect chargeable with Misconduct or Misbehaviour on the Days aforementioned; and therefore they acquit him, and he is hereby acquitted accordingly.

G. DARTY,
ROSE DICKET,
G. OGDEN,
RICH. KEMMELMIDT,
JOS. PATTON,
WM. B. VANE,
M. ROBINSON,
ADAM DUNCAN,
S. GORDALL,
ROBT. LINNIE,
J. COOPER,
G. R. WALLACE.

Geo. JACKSON,
Judge Advocate

F I W I G

The Reader of Mr. KAYE'S Trial is desired to correct the following Errors.

Captain Mendenhall's Evidence, P. 4, Col. 1, Line 12, "Topped" should be "topped", and "saw" should be "sawed".
Same Evidence, P. 7, Col. 2, Line 45, "saw" should be "sawed".
At the bottom of Page 99, Col. 2, "saw" should be "sawed".
"As I am now stating my Evidence of the Trial, I shall not state the Military Questions."
Captain James H. Linn, P. 100, Line 2, "saw" should be "sawed", and "Topped" should be "topped".
"Topped" should be "topped".
Same Evidence, P. 100, Col. 2, Line 45, "saw" should be "sawed", and "sawed" should be "sawed".